TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 98

ARIZONA GROCERY COMPANY, PETITIONER,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 19, 1931

CERTIORARI GRANTED OCTOBER 12, 1931

(35,905)

(35,905)

SUPREME COURT OF THE UNITED STATES

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NAMES AND ADDRESSES OF SOLICITORS OF RECORD.

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*Page-number appearing at the foot of page of original certified Transcript of Record.

In the District Court of the United States in and for the District of Arizona.

No. L.-695—PHX.

AT LAW.

ARIZONA GROCERY COMPANY, a Corporation,

Plaintiff,

vs.

ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, a Corporation, BAY TRANSPORT COMPANY, a Corporation, and SOUTHERN PACIFIC COMPANY, a Corporation,

Defendants.

COMPLAINT.

Plaintiff by its attorneys, Elliott and Snell, complains of the defendants, and for its cause of action alleges:

I.

That at all times hereinafter mentioned plaintiff was a corporation organized under the laws of the State of Arizona and qualified to do business in said State of Arizona.

II.

That at all times hereinafter mentioned the defendants Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company, were and now are railroad corporations engaged in the operation of railroads and railroad lines, and the defend-

ant Bay Transport Company was and now is a water transport line, that all of said defendants were and now are engaged in the transportation of freight and interstate commerce, and the Bay Transport Company and the Southern Pacific Company were at all times herein mentioned connecting carriers with the said defendant Atchison, Topeka and Santa Fe Railway Company, and between which there was an agreement for a joint line and arrangements for a continuous carriage of interstate shipments over their respective lines. [4]

III.

That between the sixth day of February, 1923, and the 10th day of Feburary, 1925, there was shipped by the above-named plaintiff to Phoenix, Arizona, over the lines of said defendants and entered Phoenix over the lines of the said Atchison, Topeka and Santa Fe Railway Company, fifty (50) carloads of sugar. That the shipments originated at San Francisco, California; Crockett, California; and Spreckels, California, as shown on Exhibit "A" attached hereto and made a part hereof.

IV.

That the said defendant Atchison, Topeka and Santa Fe Railway Company charged this plaintiff and this plaintiff was compelled to and did pay the said Atchison, Topeka and Santa Fe Railway Company, upon all of said shipments from said points in California, from the 6th day of Feburary, 1923, to the 10th day of February, 1925, inclusive, the following freight charges, to wit:

From San Francisco, California, between the dates of February 24, 1923, to the 7th day of January, 1924, inclusive, 86½ cents per hundred pounds, and from the 11th day of January, 1924, to the 10th day of February, 1925, 84 cents per hundred pounds;

From Crockett, California, between the dates of February 16, 1923, to the 4th day of January, 1924, 86½ cents per hundred pounds, and from the 3d day of Feburary, 1924, to the 19th day of August, 1924, 84 cents per hundred pounds;

From Spreckels, California, on the one shipment from said point, as shown on Exhibit "A" attached hereto, and received by the plaintiff on the 28th day of February, 1924, 84 cents per hundred pounds;

all as will more particularly appear from Exhibit "A" attached hereto and made a part hereof. That all of said shipments were made on through bills of lading, from said points of origin to said points of destination, and that the said freight charges as above set forth per hundred pounds were and [5] are unreasonable, as to this plaintiff, and a violation of *of* the Interstate Commerce Act of February 4, 1887, and Acts of Congress amendatory thereto, and that the just and reasonable freight rate which should have been charged on all of said shipments from said points of origin in California to said points of destination in Arizona after the date of July 1, 1922, was 73 cents per hundred pounds.

V.

That prior to the filing of this complaint plaintiff filed its petition and complaint with and before the Interstate Commerce Commission of the United States alleging that the rates and charges on all of said shipments from said points of origin in California to said points of destination in Arizona were unjust and unreasonable, as to the plaintiff and that thereafter the above-named defendants filed their answer with and before the Interstate Commerce Commission, said cause being docketed under Docket No. 16,742.

VI.

That said Interstate Commerce Commission made, issued, and filed its findings of fact on the 12th day of March, 1928; that said Commission found that the said rates of 86½ cents and 84 cents per hundred pounds as above set forth on said shipments from said points of origin in California to said point of destination in Arizona were unreasonable as to the plaintiff to the extent that they exceeded a rate and charge of 73 cents per hundred pounds on and after July 1, 1922, and said Commission and said report and findings found that the plaintiff herein was entitled to reparations on all of said shipments from said points of origin in California to said points of destination in Arizona, and to interest thereon; copy of which report and findings of said Commission is attached hereto, marked [6] Exhibit "B" and made a part hereof; and that said Commission required and directed that said complainants should comply with

Rule V of the rules and regulations of the Interstate Commerce Commission, which rule required a statement of the shipments and dates on which charges therefor were paid; the car initials and numbers; the points of origin; the routes over which the shipments moved; the weights of shipments; the rates charged; the amount collected; the rate which should have been charged; the amounts which should have been collected; and the differences between the charges existing and those which would have accrued upon the basis of rates found reasonable by the Commission; that in pursuance of said requirements of the Interstate Commerce Commission the plaintiff herein did on the 16th day of April, 1928, properly certify a statement under said rule and transmitted same to the defendant Atchison, Topeka and Santa Fe Railway Company, and same was thereafter certified to by the Atchison, Topeka and Santa Fe Railway Company and was thereafter transmitted by the Atchison, Topeka and Santa Fe Railway Company to the Interstate Commerce Commission; a copy of which statement is attached hereto marked Exhibit "A" and made a part hereof.

VII.

Thereafter on the 11th day of March, 1929, the Interstate Commerce Commission duly made and published its order directing and requiring the defendants herein to pay unto said plaintiff Arizona Grocery Company the following sums, to wit:

Atchison, Topeka and Santa Fe Railway Company $2203.55

Atchison, Topeka and Santa Fe Railway Company and Bay Transport Company 1251.02

Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company 297.04

together with interest thereon at the rate of six per cent [7] (6%) per annum from the respective dates of payment of the charges shown on Exhibit "A" attached hereto and made a part hereof; the said sums to be paid on or before the 26th day of April, 1929; said reparations being on account of the unreasonable rates charged for the transportation of certain carload shipments of sugar from points in California to points in Arizona, as will more particularly appear from the copy of said order hereto attached marked Exhibit "C" and made a part hereof.

VIII.

That said defendants have failed and refused to pay said reparation or any part thereof, either of principal or interest, though request and demand has heretofore been made by the plaintiff on the defendants for the payment of said reparations.

IX.

That by reason of said unreasonable rates and charges and the payment thereof by the plaintiff and by reason of the refusal of said defendants to pay said reparations awarded by the Interstate Commerce Commission, the plaintiff has been damaged in the total amount of Three Thousand Seven Hundred Fifty-one and 61/100 ($3,751.61) Dollars, to-

gether with interest thereon at the rate of six per cent (6%) per annum from the respective dates of payment of the charges as shown in Exhibit "A" attached hereto and made a part hereof; no part of which has ever been paid.

X.

That the sum of Fifteen Hundred ($1500.00) Dollars, which is a reasonable attorneys' fees, may be allowed by the Court in this action.

WHEREFORE, plaintiff demands judgment in its favor and against defendants for the sum of Three Thousand Seven [8] Hundred Fifty-one and 61/100 ($3,751.61) Dollars, together with interest thereon from the respective dates of payment as above set forth and as herein contained, together with Fifteen Hundred ($1500.00) Dollars as attorneys' fees and for plaintiff's costs and disbursements in this action; and plaintiff prays that process may issue herein.

ELLIOTT and SNELL,
Attorneys for Plaintiff. [9]

EXHIBIT "A."

133643—6

CLAIM No. 806-2 OF THE ARIZONA GROCERY COMPANY, UNDER THE DECISION OF THE INTERSTATE COMMERCE COMMISSION IN DOCKET No. 16742—ON SUGAR, CARLOADS—DESTINATION, PHOENIX, ARIZONA.

Date Shipt.	Date of Collec'n	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
				Routed via. A. T. S. F. Ry. Co.						
1923.	1923.									
# 2-24	2-28	AT	26966	San Francisco	60450	86½	522.89	73	441.29	81.60
7-25	7-31	AT	36212	San Francisco	61152	86½	528.96	73	446.41	82.55
8-30	9- 6	AT	116775	San Francisco	60758	86½	525.56	73	443.53	82.03
10- 4	10- 9	AT	34714	San Francisco	60819	86½	526.08	73	443.98	82.10
11-16	11-21	DLW	43738	San Francisco	61093	86½	528.45	73	445.98	82.47
11-23	11-30	AT	63696	San Francisco	68450	86½	592.09	73	499.69	92.40
12- 1	12- 7	AT	116509	San Francisco	61115	86½	528.64	73	446.14	82.50

Date Shipt.	Date of Collec'n	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
				Routed via. A. T. S. F. Ry. Co.						
1924.	1924.									
1- 2	1- 7	AT	116055	San Francisco	60725	86½	525.27	73	443.29	81.98
1-11	1-17	AT	118045	San Francisco	61316	84	515.05	73	447.61	67.44
1-16	1-21	AT	39566	San Francisco	83955	84	705.22	73	612.87	92.35
Bay Transport. Co.										
1-18	1-24	AT	46224	San Francisco	60619	84	509.20	73	442.52	66.68
				Routed B. T. Co., S. F. A. T. S. F. Beyond.						
1-25	1-30	AT	27562	San Francisco	60715	84	510.01	73	443.22	66.79
				Routed via. A. T. S. F. Ry. Co.						
2- 4	2- 8	AT	32233	San Francisco	60770	84	510.47	73	443.62	66.85
2-20	2-26	AT	116304	San Francisco	60832	84	510.99	73	444.07	66.92
3-20	3-24	AT	118181	San Francisco	61224	84	514.28	73	446.94	67.34
5-17	5-22	AT	116599	San Francisco	61009	84	512.48	73	445.37	67.11
6- 3	6- 9	AT	117726	San Francisco	61195	84	514.08	73	446.72	67.36

Date Shipt.	Date of Collec'n	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
				Routed via. A. T. S. F. Ry. Co.						
1924.	1924.									
7– 7	7–14	AT	116356	San Francisco	60732	84	510.15	73	443.34	66.81
7–29	8– 4	AT	46535	San Francisco	61065	84	512.95	73	445.77	67.18
8–23	8–28	AT	38975	San Francisco	60959	84	512.06	73	445.00	67.06
9– 4	9– 9	AT	35968	San Francisco	60770	84	510.47	73	443.62	66.85
9–24	9–29	AT	117847	San Francisco	60915	84	511.69	73	444.68	67.01
1923.	1923.									
2– 6	2–13	AT	33480	San Francisco	60625	86½	524.41	73	442.56	81.85

[10]

Date Shipt.	Date of Collec'n	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
				Routed via. A. T. S. F. Ry. Co.						
1924.	1924.									
9–27	10– 3	AT	116476	San Francisco	60713	84	509.99	73	443.20	66.79
11–21	11–28	AT	65098	San Francisco	60871	84	511.32	73	444.36	66.96
12–27	12–31	AT	63603	San Francisco	60812	84	510.82	73	443.93	66.89
	1925.									
12–29	1– 3	AT	130017	San Francisco	80905	84	679.60	73	590.61	88.99
1925.	1925.									
1–22	1–25	AT	36086	San Francisco	61222	84	514.26	73	446.92	67.34
1–30	2– 4	AT	65112	San Francisco	60512	84	508.30	73	441.74	66.56
2– 3	2– 6	AT	43806	San Francisco	60700	84	509.88	73	443.11	66.77

Date Shipt.	Date of Collec'n	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
1924.	1924.			Routed via. A. T. S. F. Ry. Co.						
2- 5	2-10	AT	47163	San Francisco	60737	84	510.19	73	443.38	66.81
										2203.55
1923.	1923.			Routed via. B. T. Co., San Francisco—A. T. S. F. Ry. Co.						
# 2-16	2-23	NYC	246308	Crockett	60456	86½	522.90	73	441.33	81.57
# 2-28	3- 6	AT	26875	Crockett	60450	86½	522.90	73	441.29	81.61
# 5- 9	5-15	AT	27269	Crockett	60450	86½	522.90	73	441.29	81.61
# 6- 1	6- 7	AT	32244	Crockett	61138	86½	528.84	73	446.31	82.53
# 6-14	6-19	AT	34050	Crockett	60751	86½	525.50	73	443.48	82.02
7-31	8- 7	AT	27200	Crockett	60717	86½	525.21	73	443.23	81.98
8- 9	8-15	AT	49701	Crockett	60717	86½	525.21	73	443.23	81.98
8-22	8-29	AT	48544	Crockett	83093	86½	718.75	73	606.58	112.17
9-28	10- 4	AT	38360	Crockett	60690	86½	524.79	73	443.04	81.93
12-14	12-19	NOTM	2480	Crockett	60781	86½	525.75	73	443.70	82.05

vs. Arizona Grocery Co.

Date Shipt.	Date of Collec'n	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
1924.	1924.			Routed via. A. T. S. F. Ry. Co.						
2-20	2-26	AT	33637	Crockett	60882	84	511.41	73	444.44	66.97
3- 3	3- 7	AT	33848	Crockett	60986	84	512.29	73	445.20	67.09
5- 1	5- 6	AT	35949	Crockett	60966	84	512.12	73	445.05	67.07
6-28	7- 2	AT	63056	Crockett	60690	84	509.80	73	443.04	66.76
8-14	8-19	AT	31198	Crockett	60809	84	510.80	73	443.91	66.89
										1251.02

[11]

Date Shipt.	Date of Collec'n	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
				Routed via. S. P.—Bay Point—A. T. & S. F. Ry. Co.						
1923.	1923.									
# 4–30	5– 7	SP	35299	Crockett	60737	86½	525.38	73	443.38	82.00
#12–29	1924–1–4	DLW	38646	Crockett	60723	86½	525.25	73	443.28	81.97
1924.	1924.									
2– 3	2–11	SSW	25848	Crockett	60692	84	509.81	73	443.05	66.76
										230.55
										66.49
										297.04

#Carrier's records destroyed.

vs. Arizona Grocery Co.

Date Shipt.	Date of Collec'n	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
				Routed via S. P.—Los Angeles—A. T. & S. F. Ry.						
2-20	2-28	CM&StP	92364	Spreckles	60450	84	507.78	73	441.29	66.49
					Totals		$26483.38		$22731.59	3751.79

With Accrued Interest.

THE ARIZONA COMPANY,
Claimants,
By ROLAND JOHNSTON,
Attorney.
Room 14, Arizona Fire Building,
Phoenix, Arizona, April 16, 1928.

The undersigned hereby certifies that this statement, which is issued in conformith with ICC Docket No. 16,742, AT&SF–CL Claim No. 133643–6, has been checked against the records of this Company and found correct. This certificate in so far as the Atchison, Topeka and Santa Fe Ry. Co. is concerned is made upon express understanding that it is not to be taken as an admission that the Commission's findings are correct, or that the complainant paid or bore the charges, or was damaged thereby, or is entitled to reparation.

(Signature Illegible.)
Auditor Coase Lines.

O. K.—[Initial Illegible.) [12]

EXHIBIT "B."

13146

INTERSTATE COMMERCE COMMISSION

No. 16742[1]

TRAFFIC BUREAU OF PHOENIX CHAMBER OF COMMERCE ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted April 6, 1927. Decided March 12, 1928

Rates on sugar, in carloads, from California points to destinations in Arizona and from California and Colorado points to Gallup, N. Mex., found unreasonable. Reasonable rates prescribed and

[1] This report also comprises No. 16770, Bashford-Burmister Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 1), Central Commercial Company *v.* Same; No. 16770 (Sub-No. 2), Wheeler Perry Company *v.* Santa Maria Valley Railroad Company et al.; No. 16770 (Sub-No. 3), T. F. Miller Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 4), E. F. Sanguinetti *v.* Southern Pacific Company et al.; No. 16770 (Sub-No. 5), Arizona Grocery Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 6), Arizona Wholesale Grocery Company et al. *v.* Arizona Eastern Railroad Company et al.; No. 16770 (Sub-No. 7), C. N. Cotton Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 8), Babbitt Brothers Trading Company et al. *v.* Same; No. 16770 (Sub-No. 9), Wm. H. Dagg Mercantile Company *v.* Same; No. 17549, Phelps Dodge Mercantile Company *v.* Same; No. 17549 (Sub-No. 1), Baffert & Leon *v.* Same; No. 17466, United Verde Extension Mining Company *v.* Same; No. 17781, Simpson-Ashby Company *v.* Southern Pacific Company; and Nos. 14140, Solomon-Wickersham Company *v.* Santa Maria Valley Railroad Company et al., and 14449, Traffic Bureau, Phoenix Chamber of Commerce et al. *v.* Atchison, Topeka & Santa Fe Railway Company et al., reopened for argument.

reparation awarded. Original findings in Nos. 14449 and 14140 modified in part. Former reports, 95 I. C. C. 244 and 101 I. C. C. 667.

Roland Johnston, Chas. E. Blaine, Calvin L. Blaine, F. W. Pullen, and *R. S. Sawyer* for complainants.

James R. Bell, G. H. Muckley, James E. Lyons, H. H. McElroy, A. Burton Mason, J. L. Fielding, Del W. Harrington, E. W. Camp, Platt Kent, F. W. Mielke, and *Berne Levy* for defendants.

REPORT OF THE COMMISSION

CAMPBELL, *Chairman:*

These cases are related and will be disposed of in one report. Defendants in all of the cases and complainants in Nos. 16742, 16770, and Sub-Nos. 1, 3, 4, 5, and 9 filed exceptions to the proposed report of the examiners, and defendants replied to complainants' exceptions. The cases were orally argued before us.

In these complaints it is alleged that the rates on sugar, in carloads, from California points to destinations in Arizona and from (172) California, Kansas, and Colorado points to Gallup, N. Mex., were and are unreasonable and in some instances unduly prejudicial and preferential. We are asked to prescribe just and reasonable rates for the future and to award reparation. Rates and rate differences are stated in amounts per 100 pounds.

In No. 16742, filed February 9, 1925 and No. 17781, filed informally March 16, 1925, and formally November 27, 1925, reparation is asked, respec-

tively, on shipments from California points to Phoenix to the basis of the rate of 71 cents found reasonable on and after July 1, 1922, in No. 14449, *Phoenix Chamber of Commerce* v. *A., T. & S. F. Ry. Co.*, 95 I. C. C. 244, reopened for argument with these consolidated cases.

In No. 16770 (Sub-Nos. 1 to 9), filed on various dates from February 17 to May 5, 1925, inclusive, it is alleged that the rates from California points to Prescott, Kingman, Tucson, Clarkdale, Yuma, Bowie, Safford, Globe, Flagstaff, Winslow, and Holbrook, Ariz., and from California, Kansas, and Colorado points to Gallup were and are unreasonable. There are also allegations that the rates assailed were and are unduly prejudicial to Tucson and unduly preferential of Phoenix; unduly prejudicial to Bowie, Safford, and Globe and unduly preferential of Phoenix and other points taking the same rate, Lordsburg and Deming, N. Mex., and El Paso, Tex.; unduly prejudicial to Gallup and unduly preferential of Albuquerque, N. Mex., and El Paso; and unduly prejudicial to Kingman, Flagstaff, Winslow, and Holbrook and unduly preferential of Albuquerque and Phoenix.

In Nos. 17549, 17549 (Sub-No. 1), and 17466, filed, respectively, on September 3, 1925, February 9, 1926, and August 24, 1925, the rates from California points to Bisbee, Douglas, Clifton, Tucson, and Clarkdale, Ariz., are alleged to have been and to be unreasonable and also unduly preferential of Phoenix and other points.

No. 16742 and No. 16770 (Sub-Nos. 1 to 9) were heard together. Nos. 17549, 17549 (Sub-No. 1), and 17466 were heard together. The parties in No. 17781 agreed to submission of the case upon the record in Nos. 17549, 17549 (Sub-No. 1), and 17466, except as to proof of payment of freight charges.

Phoenix is the only point in Arizona served by both the Atchison, Topeka & Santa Fe, hereinafter referred to as the Santa Fe, and the Southern Pacific. It is at the terminus of a branch line of the Santa Fe extending south from Ash Fork, Ariz., 194 miles, but California traffic over the Santa Fe is handled over a branch line, known as the Parker cut-off, extending from Cadiz, Calif., to Wickenburg, Ariz., a point on the Ashford-Phoenix branch, approximately 54 miles north of Phoenix. At the

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time of the hearings traffic from California (173) moving over the Southern Pacific reached Phoenix over the former Arizona Eastern Railroad, which connects with the main line of the Southern Pacific at Maricopa, Ariz., 35 miles south of Phoenix. Since the hearings the Southern Pacific has opened its new line from Wellton, Ariz., to Phoenix. The distances over this new line are 25 miles shorter than via Maricopa. From Los Angeles and San Francisco the present distances to Phoenix are, respectively, 489 and 800 miles over the Santa Fe and 426 and 896 miles over the Southern Pacific.

Kingman, Williams, Flagstaff, Winslow, Holbrook, and Gallup are on the main line of the Santa Fe. Clarkdale is at the terminus of a branch line of the Santa Fe, 38 miles in length, which extends

from Drake, Ariz., a point 21 miles south of Ash Fork on the Maricopa-Phoenix line.

Yuma, Tucson, and Bowie are on the main line of the Southern Pacific. Safford and Globe are on a branch line of that carrier extending from Bowie. Clifton is on a branch line of the same carrier extending from Lordsburg. Bisbee and Douglas are served by the so-called southern lines of the Southern Pacific, formerly the El Paso & Southwestern.

The California points of production extend from San Francisco on the north to Los Angeles on the south. They include San Francisco and Crockett, the only two points at which Hawaiian cane sugar is refined, as well as all points at which beet sugar is produced. All California refining points take the same rates to Arizona destinations.

In *Maier & Co.* v. *Southern Pacific Co.*, 29 I. C. C. 103, decided January 6, 1914, a rate on sugar from Los Angeles and Los Alamitos, Calif., to Benson, Ariz., of 60 cents, minimum 36,000 pounds, was prescribed. This was the contemporaneous rate to El Paso, a point more distant than Benson on the same line. The 60-cent rate was established generally to main-line Southern Pacific and Santa Fe points in Arizona and New Mexico, and the San Francisco rate was made 10 cents higher.

In *Fourth Section Violations in Rates on Sugar*, 31 I. C. C. 511, we denied authority to continue rates on sugar from San Francisco and other sugar-producing points in California to Trinidad, Colo., and other points east thereof, which were lower than the rates concurrently applicable on like traffic to inter-

mediate points on the line of the Santa Fe, and also denied authority to the Southern Pacific, El Paso & Southwestern, and Chicago, Rock Island & Pacific to continue lower rates on sugar from the points of production described to the Missouri River than the rates concurrently applicable to intermediate points west of Tucumcari, N. Mex. In addition

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(174) to making substantial reductions in the rates in connection with the minimum of 36,000 pounds, the carriers on November 15, 1914, established rates, with a minimum of 60,000 pounds, from all California producing points to practically all Arizona points on a basis 5 cents lower than the rates from Los Angeles to the same destinations upon the lower minimum.

In *Arizona Corporation Commission* v. *A., T. & S. F. Ry. Co.*, 34 I. C. C. 158, the rates from California to Phoenix and Prescott were found to be unreasonable to the extent that they exceeded the rates to the main-line junction points by more than 5 cents. As a result, on May 1, 1916, the rates from California to Phoenix and Prescott became 60 cents, minimum 60,000 pounds, and 65 cents minimum 36,000 pounds. On June 25, 1918, the main-line rates were increased 25 per cent to 69 and 75 cents, respectively, and the Phoenix and Prescott rates became 75 and 81.5 cents. Subsequently a flat increase of 22 cents was substituted for the percentage increase and the rates to main-line points became 77 and 82 cents on November 25, 1919, and to Phoenix and Prescott 82 and 87 cents on February 18, 1920.

On February 29, 1920, the carriers cancelled the rates to main-line and branch-line points under the lower minimum weight published in connection with roads under Federal control and, as to such roads, increase the Phoenix and Prescott rate under the minimum of 60,000 pounds to 83.5 cents. This cancellation, as to nonfederal lines, was found justified in *Sugar from California Points to Arizona,* 58 I. C. C. 737.

On August 26, 1920, the rates on sugar from California, minimum 60,000 pounds, became 96.5 cents to main-line points and $1.045 to Phoenix and Prescott. In *Phoenix Chamber of Commerce* v. *Director General,* 62 I. C. C. 412, decided June 22, 1921, the Phoenix rate was found unreasonable to the extent that it exceeded 96.5 cents, and reparation was awarded on that basis. On June 27, 1921, the carriers reduced the main-line rates to 96 cents, and on September 17, 1921, that rate was established to both Phoenix and Prescott. All of these rates were reduced on July 1, 1922, to 86.5 cents.

In *United Verde Mining Co.* v. *A., T. & S. F. Ry. Co.,* 88 I. C. C. 5, the rates on classes and commodities, including sugar, from California, among other origin territories, to Clarkdale were found unreasonable to the extent that they exceeded the contemporaneous rates to Drake, and on October 16, 1922, the rate on sugar from California to Clarkdale was reduced from $1.16 to 86.5 cents.

In *Sugar Cases of 1922,* 81 I. C. C. 448, fourth-section relief authorized in *Fourth Section Violations in Rates on Sugar, supra,* permitting lower

rates to Chicago, Ill., and other points in the Middle

(175) West than to intermediate points, was withdrawn. In the revision following this decision the rate to Chicago, minimum 80,000 pounds, became 84 cents, and this rate was established at intermediate points, including Gallup and main-line Southern Pacific and Santa Fe points in Arizona, but in connection with a minimum of 60,000 pounds. The same rate and minimum were established to Phoenix, Prescott, and Clarkdale.

In our original report in No. 14449 we again considered the rate from California points to Phoenix and found it to have been and to be unreasonable to the extent that it exceeded 79 and 71 cents, respectively, prior and subsequent to July 1, 1922. Reparation was awarded on that basis. The 71-cent rate was established to Phoenix and to intermediate points on the Southern Pacific and on the route of the Santa Fe over the Parker cut-off, effective February 25, 1925. In our original report in No. 14140, *Solomon-Wickersham Co.* v. *S. M. V. R. R. Co.*, 101 I. C. C. 667, reopened and here before us on argument, the rate on sugar from California points to Bowie was found to have been and to be unreasonable to the extent that it exceeded 83 and 75 cents, respectively, before and after July 1, 1922. Reparation was awarded on that basis. The reduced rate was established to Bowie and to Tucson, an intermediate point, effective October 27, 1925. The reduction to Bowie was 9 cents, and on the date named the Southern Pacific made reductions of the same amount to Safford and Globe, resulting

in rates of 80.5 and 85.5 cents, respectively. No change was made in the Clifton rate of 94.5 cents.

Summarized, the present rates, minimum 60,000 pounds, are 71 cents to Yuma and Phoenix, 75 cents to Tucson and Bowie, 80.5 cents to Safford, 84 cents to Kingman, Williams, Flagstaff, Winslow, Holbrook, Prescott, Clarkdale, Bisbee, Douglas, and Gallup, 85.5 cents to Globe, and 94.5 cents to Clifton.

The general transportation conditions from California to Arizona are fully discussed in the cases cited and also in *Arizona Corporation Commission* v. *A. E. R. R. Co.*, 113 I. C. C. 52, and will not be further discussed here. The latter case has since been reopened. In *Arizona Cattle Growers Asso.* v. *A. Ry. Co.*, 101 I. C. C. 181, division 4 approved of prescribed rates on cattle, in carloads, from points in Arizona to points in California which were approximately 20 per cent higher than the corresponding rates for like distances in Oklahoma and Texas. The same level of rates was approved or prescribed in that case from branch-line as from main-line points in Arizona.

In Nos. 16742, 16770, and 16770 (Sub-Nos. 1 to 9) counsel asks reparation on shipments to Phoenix on the basis of 71 cents, and contends that rates to the other destinations should be graded like (176)

the rate to Bowie prescribed in the first report in No. 14149, or else that there should be reasonable groupings. In Nos. 17549, 17549 (Sub-No. 1), and 17466 counsel contends that the origin group should be divided into two parts, the first to include Los Angeles, Dyer, Los Alamitos, San Pedro, and Ox-

nard, and the second San Francisco, Betteravia, Spreckles, Tracy, Alvarado, and Crockett. The principal counsel in the latter cases is also counsel for complainants in No. 16770 (Sub-Nos. 6, 7, and 8). The rates now suggested from the proposed southern group are 54 cents to Phoenix, Tucson, and Clarkdale, 59 cents to Bisbee, and 64 cents to Clifton, and rates 10 cents higher from the proposed northern group.

The rate of 71 cents to Phoenix prescribed in the original report in No. 14449 was based on a distance of 625 miles, which is approximately one-half of the sum of the short-line distances from Los Angeles and San Francisco. Reference was made in that report to the fact that under the distance scale on sugar prescribed in *Memphis-Southwestern Investigation*, 77 I. C. C. 473, for application in the general territory comprising Louisiana west of the Mississippi River, Arkansas, and southern Missouri, the rate for 625 miles is 58 cents. The rate of 71 cents prescribed is about 121 per cent of 58 cents.

The rates proposed by complainants are lower than 121 per cent of the Memphis-Southwestern scale, and in justification thereof complainants point to the fact that the minimum weight prescribed in connection with that scale is 36,000 pounds, as compared with 60,000 pounds under the rates assailed. In *Oklahoma Traffic Asso.* v. *A. G. S. R. R. Co.*, 113 I. C. C. 635, the Memphis-Southwestern scale was prescribed on sugar from New Orleans, La., and points in Louisiana taking the same rates, and from Sugarland and Texas City, Tex., to points in Oklahoma, subject to a minimum of 60,000 pounds.

Defendants are opposed to a disturbance of the origin grouping and to grading of rates at destination. They contend that because of the competitive situation the present origin and destination groupings are of advantage to producers and distributors of sugar. However, if the rates are to be graded at destination they favor breaking up the origin blanket into two groups. Defendants subscribe to a basis of rates from California to Arizona which is about 121 per cent of the rates for the same distances under the Memphis-Southwestern scale, provided that the rates to Arizona points are based upon the weighted-average haul.

As stated, the only California points at which cane sugar is refined are San Francisco and Crockett. The southern California distributors of beet sugar stock a limited amount of cane sugar in order to fill orders for mixed carloads containing certain

varieties of sugar (177) not obtainable at beet-sugar refineries. The production of beet sugar in California during 1925 was as follows:

Producing point	Quantity *Tons*	Producing point	Quantity *Tons*
Dyer	9,095	Tracy	8,297
Los Alamitos	2,010	Alvarado	9,580
Oxnard	15,310		
Betteravia	18,559	Total	92,917
Spreckles	30,066		

The production at the southern California points of Dyer, Los Alamitos, and Oxnard was 28.43 per cent of the total production for the State during 1925. In addition there was a substantial movement of sugar by water to San Pedro, Calif.

During the past several years, due to blight, drought, and the use for other purposes of land for-

merly planted in beets, there has been a substantial diminution in the amount of beet sugar produced in southern California and, as a consequence, a reduction in the number of refineries. The following table, giving movements from California refineries on the Southern Pacific to destinations in Arizona and New Mexico and to El Paso, shows that there has been a substantial reduction, both in the volume of movement from southern California to the territory of destination described and in the ratio such tonnage bears to the tonnage from northern California:

	Northern California			Southern California		
	Cars	Tons	Per cent	Cars	Tons	Per cent
Year 1921	187	5,920	24	265	8,519	76
Year 1922	188	5,920	39.4	265	8,423	70.6
Year 1923	247	7,754	72.9	67	2,129	27.1
Year 1924	313	9,856	86	44	1,415	14
Year 1925	504	15,615	95.5	23	714	4.5

In addition to the above there were shipments of sugar from San Francisco over the Santa Fe to destinations on its own line west of Albuquerque. In 1925 they amounted to 107 cars, weighing 3,029 tons. This additional tonnage changes the percentages for 1925 to 96.3 per cent from northern California and 3.7 per cent from southern California. Of the total of 611 cars from northern California, 227 moved from San Francisco and 370 from Crockett. The weight of the shipments from these two points aggregated 18,490 tons. Only 14 cars moved from other northern California points, of which 11 moved from Spreckels and 3 from Betteravia.

We have upon this record no serious contention from producers, distributors, or consumers that a

breaking up of the present extensive (178) origin and destination groupings would be detrimental to their interests. Bearing in mind the length of time during which the present California group has existed and the fact that until recent years the movement has been substantial from both northern and southern California, we do not find that group as such to have been or to be unreasonable; but in view of the fact that most of the movement now is from two of the most distant points of shipment, an origin group approximately 500 miles in length is no longer justified. A more reasonable adjustment for the future would seem to require the breaking up of the origin territory into two groups, the northern group extending from San Francisco and Crockett on the north to Spreckels on the south, and the southern group extending from Betteravia on the north to Dyer on the south.

Since the hearings in these cases we have decided *Consolidated Southwestern Cases,* 123 I. C. C. 203, in which new distance scales of rates were prescribed for application on classes and commodities generally throughout the Southwest. The scale on sugar prescribed in those cases, hereinafter referred to as the southwestern scale, is 30 per cent of the first-class rates therein prescribed and will apply in connection with a minimum weight of 60,000 pounds. The following table shows the average short-line distances from the southern and northern groups to points or groups of destination and compares the rates proposed by certain of complainants with rates on basis of 120 per cent of the southwestern scale for like distances:

	From southern group			From northern group		
	Distance	Complainants' proposed rates	120% of southwestern rates	Distance	Complainants' proposed rates	120% of southwestern rates
	Miles	*Cents*	*Cents*	*Miles*	*Cents*	*Cents*
From Group 1 to Yuma, Ariz.	267	40	45.5	637	50	72
From Group 2 to Kingman, Ariz.	388	47	56.5	645	57	73
From Group 3 to Phoenix, Ariz.	467	55	61	749	65	79
From Group 4 to—						
Tucson, Ariz.	519	.....	.....	847	.....	.....
Prescott, Ariz.	526	.....	.....	782	.....	.....
Williams, Ariz.	527	.....	.....	783	.....	.....
Flagstaff, Ariz.	561	.....	.....	818	.....	.....
Clarkdale, Ariz.	563	.....	.....	820	.....	.....
Group average	539	55	65	810	65	83
From Group 5 to—						
Winslow, Ariz.	619	.....	.....	876	.....	.....
Bisbee, Ariz.	628	.....	.....	956	.....	.....
Bowie, Ariz.	634	.....	.....	961	.....	.....
Douglas Ariz.	643	.....	.....	971	.....	.....
Holbrook, Ariz.	652	.....	.....	909	.....	.....
Group average	635	59	72	935	69	89
From Group 6 to—						
Safford, Ariz.	674	60	74.5	1,001	70	92.5
From Group 7 to—						
Gallup, N. Mex.	747	.....	.....	1,004	.....	.....
Clifton, Ariz.	753	.....	.....	1,081	.....	.....
Globe, Ariz.	758	.....	.....	1,085	.....	.....
Group average	752	64	79	1,057	74	95

(179) No. 16670 (Sub-No. 7) brings in issue the reasonableness of the rates from Colorado and Kansas refineries to Gallup, and contains a prayer for reparation on shipments subsequent to March 31, 1923. Prior to June 25, 1918, the rate on sugar from transcontinental Group E, which includes New Orleans, to Pacific coast points was 85 cents, minimum 60,000 pounds, and this rate applied as maximum from Kansas and Colorado points. The general increases and reduction resulted in rates from Colorado and Kansas, respectively, to Arizona points on the Santa Fe of $1.195 and $1.28, the difference resulting from general increase of 25 and 33⅓ per cent, respectively, from Colorado and Kansas on August 26, 1920. At the time of the hearing the fifth-class rate of $1.145 was applicable on sugar from Colorado refineries to Gallup. At that time a commodity rate of 75 cents applied from Colorado points to Albuquerque, and on August 1, 1925, the present commodity rate of 84 cents, minimum 60,000 pounds, was established from the same points to Gallup. The present rate to Aubuquerque is 76 cents, and the same rate applies from Denver and Pueblo, Colo., to El Paso. To Fort Worth, Tex., the rate is 72 cents, minimum 36,000 pounds.

The record fails to show any movement, actual or prospective, from Kansas, and the rates from that State will not be further considered.

The Colorado points of origin are shown by complainant as including Denver, Fort Collins, Greeley, Holly, Lamar, Longmont, Loveland, Las Ani-

mas, Lupton, Rocky Ford, Swink, and Windsor. The Santa Fe, which is the only carrier serving the Colorado group named as defendant herein, carries rates to points on its line in Arizona and New Mexico only from Holly, Lamar, Las Animas, Rocky Ford, and Swink. The average distance from the group to Gallup is shown by complainants as 625 miles. Complainant in No. 16670 (Sub-No. 7) showed only seven shipments from Colorado to Gallup since March 31, 1923, six from Swink, and one from Rocky Ford.

The rates herein prescribed under section 1 will remove any undue prejudice which may exist in the rates assailed, and no findings with respect to the allegations under section 3 are necessary.

The evidence shows that all of the complainants, except the C. N. Cotton Company, made or received shipments of sugar as described, and paid and bore the charges thereon.

Defendants call attention to the fact that in our original report in No. 14449 we awarded reparation on shipments which moved to Phoenix on a rate 0.5 cent less than the rate prescribed as reasonable by us from and to the same points in *Phoenix*

Chamber of Commerce (180) v. *Director General, supra,* referred to as the first Phoenix case, and that the period of reparation in the former case extended back approximately four months prior to the date when the latter case was decided. Defendants contend that they should not be required to pay reparation on shipments which moved under

rates approved or prescribed by us. We have several times announced that the doctrine of *res adjudicata* is not applied by us. *Goss* v. *Director General*, 73 I. C. C. 649. We reserve the right, upon a more comprehensive record, to modify our previous findings, whether in the same or a previous case, upon matters directly in issue before us as to which it clearly appears that our previous findings would not accord substantial justice under the laws which we administer. We have such a case here. For the first time the record before us is comprehensive in the evidence which it contains bearing upon the reasonableness of the rates assailed. Upon this record we reach the conclusion that the rate prescribed in the first Phoenix case, during the period embraced in these complaints, was unreasonable and that a lower rate would have been reasonable during that period. If we are within our authority in finding that a lower rate would have been reasonable, then it must follow that shippers who paid the freight charges at the higher rate paid charges which were unreasonable, and are entitled to reparation upon adequate proof that they paid or bore such charges.

We find that the assailed rate, minimum 60,000 pounds, from Holly and other Santa Fe points in Colorado grouped therewith to Gallup was, is, and will be unreasonable to the extent that it exceeded, exceeds, or may exceed 72 cents. We further find that the assailed rates, minimum 60,000 pounds, from California points were, are, and will be unreasonable to the extent that they exceeded, exceed, or

may exceed, respectively, the following, in cents per 100 pounds:

Prior to July 1, 1922, to Phoenix 79 cents from the southern California group and 81 cents from the northern California group and to Bowie 83 cents from the southern California group and 93 cents from the northern California group; on and between July 1, 1922, and the effective date of the rates herein prescribed for the future, from the southern California group and the northern California group, respectively, 66 and 66 cents to Yuma, 68 and 69 cents to Kingman, 71 and 73 cents to Phoenix, 73 and 77 cents to Prescott, Williams, Tucson, Flagstaff, and Clarkdale, 75 and 84 cents to Winslow, Holbrook, Bisbee, Bowie, and Douglas, 77 and 87 cents to Safford, and 79 and 89 cents to Gallup, Clifton, and Globe; and for the future as follows:

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To—	From southern California group *Cents*	From northern California group *Cents*
Yuma, Ariz.	46	66
Kingman, Ariz.	57	69
Phoenix, Ariz.	61	73
Tucson, Ariz.	65	77
Prescott, Ariz.	65	77
Williams, Ariz.	65	77
Flagstaff, Ariz.	65	77
Clarkdale, Ariz.	65	77
Winslow, Ariz.	72	84
Bisbee, Ariz.	72	84
Bowie, Ariz.	72	84
Douglas, Ariz.	72	84
Holbrook, Ariz.	72	84
Safford, Ariz.	75	87
Gallup, N. Mex.	79	89
Clifton, Ariz.	79	89
Globe, Ariz.	79	89

We further find that complainants, except the C. N. Cotton Company, made shipments as described at the rates herein found to have been unreasonable; that they paid and bore the charges thereon and were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found to have been reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice. No reparation orders have been issued in Nos. 14449 and 14140, and complainants in those cases should submit to the carriers new statements in compliance with Rule V referred to.

Our original order in No. 14449 and the order of division 3 in No. 14140 will be modified in conformity with the foregoing conclusions, and appropriate orders for the future will be entered in other cases disposed of in this report.

TAYLOR, *Commissioner,* concurring in part:

I dissent from so much of this report as finds the rates unreasonable in the past and awards reparation.

Commissioner PORTER did not participate in the disposition of this case.

ORDERS

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of March, A. D. 1928

No. 16770

Bashford-Burmister Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 1)

Central Commercial Company

v.

Same

No. 16770 (Sub-No. 2)

Wheeler Perry Company

v.

Santa Maria Valley Railroad Company and Southern Pacific Company

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No. 16770 (Sub-No. 3)

T. F. Miller Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 4)

E. F. Sanguinetti

v.

Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

(I)

No. 16770 (Sub-No. 5)

Arizona Grocery Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 6)

Arizona Wholesale Grocery Company

v.

Arizona Eastern Railroad Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

No. 16770 (Sub-No. 7)

C. N. Cotton Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Pacific Electric Railway Company; Rio Grande, El Paso and Santa Fe Railroad Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

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No. 16770 (Sub-No. 8)

Babbitt Brothers Trading Company; Arizona Stores Company; Babbitt Brothers Company; and Babbitt Brothers

v.

Same

No. 16770 (Sub-No. 9)

Wm. H. Dagg Mercantile Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 17549

Philps Dodge Mercantile Company

v.

The Atchison, Topeka & Santa Fe Railway Company; El Paso & Southwestern Railroad Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

(II)

No. 17549 (Sub-No. 1)

Baffert & Leon

v.

The Atchison, Topeka & Santa Fe Railway Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

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No. 17466

United Verde Extension Mining Company

v.

Same

No. 17781

Simpson-Ashby Company

v.

Southern Pacific Company

These cases being at issue upon complaints, as amended, and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its find-

ings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to points in Arizona, referred to in the next succeeding paragraph hereof, and to Gallup, N. Mex., and from points in Colorado, referred to in the second succeeding paragraph hereof, to Gallup, which shall exceed the rates hereinafter prescribed.

It is further ordered, That said defendants, according as they participate in the transportation, be and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, from the following California groups, as defined in the report made a part hereof, to the Arizona and New Mexico destinations named below, rates, minimum weight 60,000 pounds, which shall not exceed the following, in cents per 100 pounds:

To—	From southern California group *Cents*	From northern California group *Cents*
Yuma, Ariz.	46	66
Kingman, Ariz.	57	69
Phoenix, Ariz.	61	73
Tucson, Ariz.	65	77
Prescott, Ariz.	65	77
Williams, Ariz.	65	77
Flagstaff, Ariz.	65	77
Clarkdale, Ariz.	65	77
Winslow, Ariz.	72	84
Bisbee, Ariz.	72	84
Bowie, Ariz.	72	84
Douglas, Ariz.	72	84
Holbrook, Ariz.	72	84
Safford, Ariz.	75	87
Gallup, N. Mex.	79	90
Clifton, Ariz.	79	90
Globe, Ariz.	79	90

It is further ordered, That said defendants in No. 16670 (Sub-No. 7), according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, from Holly, Lamar, Rocky Ford, and Swink, Colo., and other points on the Atchison, Topeka & Santa Fe Railway in Colorado taking the same rates, to Gallup, N. Mex., a rate which shall not exceed 72 cents per 100 pounds, minimum weight 60,000 pounds.

And it is further ordered, That these orders shall continue in force until the further order of the commission.

SUPPLEMENTAL ORDERS

No. 14449

Traffic Bureau of the Phoenix Chamber of Commerce; Haas-Baruch & Company; Hall-Pollock Company; The Melczer Company; and James A. Dick Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Arizona Eastern Railroad Company

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No. 14140

Solomon-Wickersham Company

v.

Santa Maria Valley Railroad Company and Southern Pacific Company

These cases having been reopened for oral argument jointly with No. 16742, *Traffic Bureau of the Phoenix Chamber of Commerce et al.* v. *A., T. & S. F. Ry. Co. et al.*, and cases consolidated therewith and such oral argument having been had, and the commission having, on the date hereof, made and filed a new report containing its findings of fact

and conclusions thereon, which said report, together with the previous reports herein, 95 I. C. C. 244 and

101 I. C. C. 667, are hereby referred to and made a part hereof:

It is ordered, That the order entered in No. 14449 on January 6, 1925, and the order entered in No. 14140 on July 17, 1925, be, and they are hereby, modified so that the second and third paragraphs thereof will read, respectively, as follows:

It is ordered, That the above-named defendants in No. 14449, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to Phoenix, Ariz., which shall exceed the rates prescribed in the next succeeding paragraph hereof.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, rates to Phoenix, Ariz., minimum weight 60,000 pounds, which shall not exceed 61 cents per 100 pounds from points in the southern California group, as defined in the report of this date made a part hereof, and 73 cents per 100 pounds from points in the northern California group, as defined in the said report.

It is ordered, That the above-named defendants in No. 14140, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to Bowie, Ariz., which shall exceed the rates prescribed in the next succeeding paragraph hereof.

It is further ordered That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, rates to Bowie, Ariz., minimum weight 60,000 pounds, which shall not exceed 72 cents per 100 pounds from the southern California group, as defined in the report of this date made a part hereof, and 84 cents per 100 pounds from the northern California group, as defined in the said report.

And it is further ordered, That these supplemental orders shall continue in force until the further order of the commission.

By the commission.

[Seal.] GEORGE B. McGINTY,
Secretary.

(v)

U. S. Government printing office: 1928 [13]

EXHIBIT "C."

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 11th day of March, A. D. 1929

No. 16742

Traffic Bureau of Phoenix Chamber of Commerce, et al.,

v.

The Atchison, Topeka & Santa Fe Railway Company, et al.

It appearing, That on March 12, 1928, the commission entered its report in the above-entitled proceeding, which report is hereby referred to and made a part hereof, and this proceeding now coming on for further consideration on the question of reparation, and the parties having filed agreed statements with respect to the shipments in question, showing, among other things, the dates on which payment of the charges assailed was made; we find that complainant is entitled to awards of reparation from the defendants named in the following table, in the amounts set opposite their respective names, with interest.

Defendants	Amounts
The Atchison, Topeka & Santa Fe Railway Company	$2,203.55
Bay Transport Company, and The Atchison, Topeka & Santa Fe Railway Company	1,251.02
Southern Pacific Company, and The Atchison, Topeka & Santa Fe Railway Company	297.04
Southern Pacific Company	2,104.58
Santa Maria Valley Railroad Company, and Southern Pacific Company	359.75

It is therefore ordered, That the defendants, named in each of the groups shown in the above table, be, and they are hereby, authorized and directed to pay unto the complainant, Arizona Grocery company, on or before April 26, 1929, the amounts set opposite their respective names in said table, with interest thereon at the rate of six per cent per annum, from the respective dates of payment of the charges assailed shown in the aforesaid agreed statements, as reparation on account of unreasonable rates charged for the transportation of numerous carloads of sugar, from California points to destinations in Arizona and from California and Colorado points to Gallup, N. Mex.

By the commission.

(Seal) GEORGE B. McGINTY,
Secretary. [14]

Endorsement on Complaint: Law-695 — Phx. Filed Oct 16, 1929. [15]

In the District Court of the United States, in and for the District of Arizona.

No. L.–696—PHOENIX.

AT LAW.

ARIZONA GROCERY COMPANY, a Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation, and SANTA MARIA VALLEY RAILROAD COMPANY, a Corporation,

Defendants.

COMPLAINT.

Plaintiff by its attorneys, Elliott and Snell, complains of the defendants, and for its cause of action alleges:

I.

That at all times hereinafter mentioned plaintiff was a corporation organized under the laws of the State of Arizona and qualified to do business in said State of Arizona.

II.

That at all times hereinafter mentioned the defendants Southern Pacific Company and Santa Maria Valley Railroad Company were and now are railroad corporations engaged in the operation of railroads and railroad lines for the transportation of freight and interstate commerce, and the Santa Maria Valley Railroad Company is a

connecting carrier with the said defendant Southern Pacific Company, and between which there was an agreement for a joint line, and arrangements for a continuous carriage of interstate shipments over their respective lines.

III.

That between the 21st day of February, 1923, and [16] the 5th day of February, 1925, there was shipped by the above-named plaintiff to Phoenix, Arizona, over the lines of said defendants and entered Phoenix, Arizona, over the lines of said Southern Pacific Company, thirty-two (32) carloads of sugar. That the shipments originated at San Francisco, California; Crockett, California; Oxnard, California; and Betteravia, California, as shown on Exhibit "A" attached hereto and made a part hereof.

IV.

That the said defendant Southern Pacific Company charged this plaintiff, and this plaintiff was compelled to and did pay the said Southern Pacific Company upon all of said shipments from said points in California from the 21st day of February, 1923, to the 5th day of February, 1925, inclusive, the following freight charges, to wit:

From San Francisco, California; Oxnard, California; Crockett, California; and Betteravia, California, between the dates of February 21, 1923, to *the* including the 16th day of November, 1923, 86½ cents per hundred pounds; and from the 5th day of February, 1924, to the

4th day of February, 1925, inclusive, 84 cents per hundred pounds;

all as will more particularly appear from Exhibit "A" attached hereto and made a part hereof. That all of said shipments were made on through bills of lading from said points of origin to said points of destination, and that said freight charges as above set forth, per hundred pounds, were, and are unreasonable as to this plaintiff, and a violation of the Interstate Commerce Act of February 4, 1887, and Acts of Congress amendatory thereto, and that the just and reasonable freight rate which should have been charged on all of said shipments from Crockett, California, and San Francisco, California, to said points of destination, to wit, Phoenix, Arizona, after the date of July 1, 1922, was 73 cents per hundred pounds; and on all of said shipments from Oxnard, California, and Betteravia, California, [17] to said point of destination, to wit, Phoenix, Arizona, after the date of July 1, 1922, was 71 cents per hundred pounds.

V.

That prior to the filing of this complaint plaintiff filed its petition and complaint with and before the Interstate Commerce Commission of the United States alleging that the rates and charges on all of said shipments from said points of origin in California to said points of destination in Arizona were unjust and unreasonable as to the plaintiff and that thereafter the above-named defendants filed their answer with and before the Inter-

state Commerce Commission, said cause being docketed under said Docket No. 16742.

VI.

That said Interstate Commerce Commission, made, issued, and filed its findings of fact on the 12th day of March, 1928; that said Commission found that the said rates of 86½ cents and 84 cents per hundred pounds as above set forth on said shipments from said points of origin in California to said points of destination in Arizona were unreasonable as to the plaintiff to the extent that they exceeded a rate and charge of 73 cents per hundred pounds on and after July 1, 1922, from Crockett, California, and San Francisco, California; and 71 cents per hundred pounds from Oxnard, California, and Betteravia, California, on and after July 1, 1922; and said Commission and said report and findings found that the plaintiff herein was entitled to reparations on all of said shipments from said points of origin in California to said points of destination in Arizona; and to interest thereon; copy of which report and findings of said Commission is attached hereto, marked Exhibit "B" and made a part hereof; and that said Commission required and directed that said complainants should comply with Rule V of the Rules and Regulations of the Interstate Commerce Commission, [18] which rule required a statement of the shipments and dates on which charges therefor were paid; the car initials and numbers; the points of origin; routes over which the shipments moved; the weights of shipments; the rates

charged; the amounts collected; the rates which should have been charged; the amounts which should have been collected; and differences between the charges existing and those which would have accrued upon the basis of rates found reasonable by the Commission; that in pursuance of said requirements of the Interstate Commerce Commission the plaintiff herein did on the 16th day of April, 1928, properly certify a statement under said Rule and transmitted same to the defendant Southern Pacific Company; and same was thereafter certified to by the Southern Pacific Company on the 17th day of September, 1928, and was thereafter transmitted by the Southern Pacific Company to the Interstate Commerce Commission; a copy of which statement is attached hereto marked Exhibit "A" and made a part hereof.

VII.

Thereafter on the 11th day of March, 1929, the Interstate Commerce Commission duly made and published its Order directing and requiring the defendants herein to pay unto said plaintiff Arizona Grocery Company, the following sums, to wit:

Southern Pacific Company $2,104.58

Southern Pacific Company and Santa Maria Valley Railroad Company 359.75

together with interest thereon at the rate of six per cent (6%) per annum from the respective dates of payment of the charges shown on Exhibit "A" attached hereto and made a part hereof; the said sums to be paid on or before the 26th day of

April, 1929; said reparations being on account of the unreasonable rates charged for the transportation of certain carload shipments of sugar to points in Arizona from points [19] in California; as will more particularly appear from the copy of said order hereto attached, marked Exhibit "C" and made a part hereof.

VIII.

That said defendants have failed and refused to pay said reparation or any part thereof, either of principal or interest, though request and demand has heretofore been made by the plaintiff of the defendants for the payment of said reparations.

IX.

That by reason of said unreasonable rates and charges and the payment thereof by the plaintiff, and by reason of the refusal of said defendants to pay said reparations awarded by the Interstate Commerce Commission, the plaintiff has been damaged in the total sum of Twenty-four Hundred Sixty-four and 33/100 ($2,464.33) Dollars, together with interest thereon at the rate of six per cent (6%) per annum from the respective dates of payment of the charges as shown in Exhibit "A" attached hereto and made a part hereof; no part of which has ever been paid.

X.

That the sum of One Thousand ($1,000.00) Dollars, which is a reasonable attorneys' fees, may be allowed by the Court in this action.

WHEREFORE, plaintiff demands judgment in its favor and against defendants for the sum of Twenty-four Hundred Sixty-four and 33/100 ($2,464.33) Dollars, together with interest thereon from the respective dates of payment as above set forth and as herein contained, together with One Thousand ($1,000.00) Dollars as attorneys' fees, and for plaintiff's costs and disbursements in this action; and plaintiff prays that process may issue herein.

ELLIOTT & SNELL,
Attorneys for Plaintiff. [20]

88.98
66.93
22.03
66.76
22.02
44.74

Calculation checked by Shrafel 9-6-28.

CLAIM No. 805-1

EXHIBIT "A".

CLAIM No. 805-1 OF THE ARIZONA GROCERY COMPANY, UNDER THE DECISION OF THE INTERSTATE COMMERCE COMMISSION IN DOCKET No. 16742—ON SUGAR CARLOADS—DESTINATION, PHOENIX, ARIZONA.

Date Shipt.	Date Charges Paid	Car Init.	Car No.	Origin (Calif.)	Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Route via Southern Pacific Company.						
1923 2-22	1923 3-1	CM&StP	87286	Crockett	60789	86½	525.82	73	443.76	82.06
3-13	3-20	GH&SA	50987	San Francisco	60896	86½	526.75	73	444.54	82.21

Date Shipt.	Date Charges Paid	Car Init.	Car No.	Origin (Calif.)	Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via Southern Pacific Company.						
1923	1923									
3–20	3–28	SP	87745	San Francisco	60813	86½	526.03	73	443.93	82.10
4–25	5–2	SP	35005	San Francisco	60788	86½	525.82	73	443.75	82.07
5–12	5–19	SP	27309	San Francisco	60838	86½	526.25	73	444.12	82.13
6–27	7–10	SP	16940	San Francisco	81023	86½	700.85	73	591.47	109.38
9–14	9–20	SP	26505	Oxnard	60450	86½	522.89	71	429.20	93.69
9–19	9–26	SP	35048	San Francisco	60838	86½	526.25	73	444.12	82.13
10–11	10–18	SP	21533	Oxnard	60450	86½	522.89	71	429.20	93.69
1924	1924									
3–22	3–28	SP	16776	San Francisco	60450	84	507.78	71	429.20	78.58
2–5	2–12	CGW	29228	Oxnard	60750	84	510.30	73	443.48	66.82
2–29	4–9	SP	29047	San Francisco	60782	84	510.57	73	443.71	66.96
4–11	4–17	NYC	248647	San Francisco	60940	84	511.90	73	444.86	67.04

Date Shipt.	Date Charges Paid	Car Init.	Car No.	Origin (Calif.)	Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via Southern Pacific Company.						
1924	1924									
6-14	6-20	NTC	51840	Crockett	60651	84	509.47	73	442.75	66.72
6-24	7-2	SP	28501	San Francisco	60964	84	512.10	73	445.04	67.06
6-25	7-2	SP	81424	Crockett	60678	84	509.70	73	442.95	66.75
8-16	8-25	Sou	135043	Crockett	60657	84	509.52	73	442.80	66.72
8-28	9-2	SP	16630	Crockett	60733	84	510.16	73	443.35	66.81
9-18	9-24	SP	81461	Crockett	60690	84	509.80	73	443.04	66.76
9-25	10-1	LW	32523	Crockett	60677	84	509.69	73	442.94	66.75
11-5	11-14	MK&T	68173	San Francisco	61253	84	514.53	73	447.15	67.38
11-13	11-18	SP	30000	Crockett	60679	84	509.70	73	442.96	66.74
12-1	12-8	SP	28487	Crockett	60640	84	509.38	73	442.67	66.71

[21]

Date Shipt.	Date Charges Paid	Car Init.	Car No.	Origin (Calif.)	Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via Southern Pacific Co.						
1924	1924									
12–3	12–9	SP	30791	San Francisco	60669	84	509.62	73	442.88	66.74
12–15	12–22	SP	21267	Crockett	90707	84	761.94	73	662.16	99.78
1925	1925									
1–7	1–13	SP	29825	San Francisco	60983	84	512.25	73	445.18	67.07
1–14	1–19	SP	27862	San Francisco	60890	84	511.48	73	444.50	66.98
1–29	2–4	SSW	27113	Crockett	60676	84	509.68	73	42 93	66.75
					1751354					2104.58

Date Shipt.	Date Charges Paid	Car Init.	Car No.	Origin (Calif.)	Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via S.M.V.RR.CO.—SP.CO						
1923	1923									
3-16	9-20	SP	16564	Betteravia	60450	86½	522.89	71	429.20	93.69
9-28	10-5	LW	32484	Betteravia	60450	86½	522.89	71	429.20	93.69
10-9	10-16	SP	87173	Betteravia	60450	86½	522.99	71	429.20	93.79
1924	1924									
6-16	6-23	GH	50670	Betteravia	60450	84	507.78	71	429.20	78.58
					241800					359.75
						Total—	16,929.67		14,465.44	2,464.23
						With accrued interest				2464.33

ARIZONA GROCERY COMPANY, Claimant.
By ROLAND JOHNSTON, Attorney,
Room 14—Arizona Fire Building,
Phoenix, Arizona, April 16, 1928.

The undersigned hereby certifies that the foregoing statement has been checked against the records of this company and found correct with respect to date of shipment, date of delivery or tender of delivery, date charges are paid, car initials and number, weight, rate and charges paid (except that shipments moving prior to September, 1924, are certified correct as shown only by attached freight bills, records covering this period having been destroyed).

SOUTHERN PACIFIC COMPANY,
Collecting Carrier, Defendant.
By [Initials Illegible.]
Auditor of Freight Accounts.
Sept. 17, 1928.

Checked by
SHRAFEL.
W. C. SEARS.
9/6/28.
(Balance of above stamp illegible.)
L. M. 9/14/28. [22]

EXHIBIT "B."

13146

INTERSTATE COMMERCE COMMISSION

No. 16742[1].

TRAFFIC BUREAU OF PHOENIX CHAMBER OF COMMERCE ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted April 6, 1927. Decided March 12, 1928

Rates on sugar, in carloads, from California points to destinations in Arizona and from California and Colorado points to Gallup, N. Mex., found unreasonable. Reasonable rates prescribed and reparation awarded. Original findings in Nos. 14449 and 14140 modified in part. Former reports, 95 I. C. C. 244 and 101 I. C. C. 667.

[1]This report also comprises No. 16770, Bashford-Burmister Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 1), Central Commercial Company *v.* Same; No. 16770 (Sub-No. 2), Wheeler-Perry Company *v.* Santa Maria Valley Railroad Company et al.; No. 16770 (Sub-No. 3), T. F. Miller Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 4), E. F. Sanguinetti *v.* Southern Pacific Company et al.; No. 16770 (Sub-No. 5), Arizona Grocery Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 6), Arizona Wholesale Grocery Company et al. *v.* Arizona Eastern Railroad Company et al.; No. 16770 (Sub-No. 7), C. N. Cotton Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 8), Babbitt Brothers Trading Company et al. *v.* Same; No. 16770 (Sub-No. 9), Wm. H. Dagg Mercantile Company *v.* Same; No. 17459, Phelps Dodge Mercantile Company *v.* Same; No. 17549 (Sub-No. 1), Baffert & Leon *v.* Same; No. 17466, United Verde Extension Mining Company *v.* Same; No. 17781, Simpson-Ashby Company *v.* Southern Pacific Company; and Nos. 14140, Solomon-Wickersham Company *v.* Santa Maria Valley Railroad Company et al., and 14449, Traffic Bureau, Phoenix Chamber of Commerce et al. *v.* Atchison, Topeka & Santa Fe Railway Company et al., reopened for argument.

Roland Johnston, Chas. E. Blaine, Calvin L. Blaine, F. W. Pullen, and *R. S. Sawyer* for complainants.

James R. Bell, G. H. Muckley, James E. Lyons, H. H. McElroy, A. Burton Mason, J. L. Fielding, Del W. Harrington, E. W. Camp, Platt Kent, F. W. Mielke, and *Berne Levy* for defendants.

REPORT OF THE COMMISSION

CAMPBELL, *Chairman:*

These cases are related and will be disposed of in one report. Defendants in all of the cases and complainants in Nos. 16742, 16770, and Sub-Nos. 1, 3, 4, 5, and 9 filed exceptions to the proposed report of the examiners, and defendants replied to complainants' exceptions. The cases were orally argued before us.

In these complaints it is alleged that the rates on sugar, in carloads, from California points to destinations in Arizona and from (172) California, Kansas, and Colorado points to Gallup, N. Mex., were and are unreasonable and in some instances unduly prejudicial and preferential. We are asked to prescribe just and reasonable rates for the future and to award reparation. Rates and rate differences are stated in amounts per 100 pounds.

In No. 16742, filed February 9, 1925 and No. 17781, filed informally March 16, 1925, and formally November 27, 1925, reparation is asked, respectively, on shipments from California points to Phoenix to the basis of the rate of 71 cents found reasonable on and after July 1, 1922, in No. 14449, *Phoenix*

Chamber of Commerce v. *A., T. & S. F. Ry. Co.*, 95 I. C. C. 244, reopened for argument with these consolidated cases.

In No. 16770 (Sub-Nos. 1 to 9), filed on various dates from February 17 to May 5, 1925, inclusive, it is alleged that the rates from California points to Prescott, Kingman, Tucson, Clarkdale, Yuma, Bowie, Safford, Globe, Flagstaff, Winslow, and Holbrook, Ariz., and from California, Kansas, and Colorado points to Gallup were and are unreasonable. There are also allegations that the rates assailed were and are unduly prejudicial to Tucson and unduly preferential of Phoenix; unduly prejudicial to Bowie, Safford, and Globe and unduly preferential of Phoenix and other points taking the same rate, Lordsburg and Deming, N. Mex., and El Paso, Tex.; unduly prejudicial to Gallup and unduly preferential of Albuquerque, N. Mex., and El Paso; and unduly prejudicial to Kingman, Flagstaff, Winslow, and Holbrook and unduly preferential of Albuquerque and Phoenix.

In Nos. 17549, 17549 (Sub-No. 1), and 17466, filed, respectively, on September 3, 1925, February 9, 1926, and August 24, 1925, the rates from California points to Bisbee, Douglas, Clifton, Tucson, and Clarkdale, Ariz., are alleged to have been and to be unreasonable and also unduly preferential of Phoenix and other points.

No. 16742 and No. 16770 (Sub-Nos. 1 to 9) were heard together. Nos. 17549, 17549 (Sub-No. 1), and 17466 were heard together. The parties in No. 17781 agreed to submission of the case upon the

record in Nos. 17549, 17549 (Sub-No. 1), and 17466, except as to proof of payment of freight charges.

Phoenix is the only point in Arizona served by both the Atchison, Topeka & Santa Fe, hereinafter referred to as the Santa Fe, and the Southern Pacific. It is at the terminus of a branch line of the Santa Fe extending south from Ash Fork, Ariz., 194 miles, but California traffic over the Santa Fe is handled over a branch line, known as the Parker cut-off, extending from Cadiz, Calif., to Wickenburg, Ariz., a point on the Ashford-Phoenix branch, approximately 54 miles north of Phoenix. At the

time of the hearings traffic from California (173) moving over the Southern Pacific reached Phoenix over the former Arizona Eastern Railroad, which connects with the main line of the Southern Pacific at Maricopa, Ariz., 35 miles south of Phoenix. Since the hearings the Southern Pacific has opened its new line from Wellton, Ariz., to Phoenix. The distances over this new line are 25 miles shorter than via Maricopa. From Los Angeles and San Francisco the present distances to Phoenix are, respectively, 489 and 800 miles over the Santa Fe and 426 and 896 miles over the Southern Pacific.

Kingman, Williams, Flagstaff, Winslow, Holbrook, and Gallup are on the main line of the Santa Fe. Clarkdale is at the terminus of a branch line of the Santa Fe, 38 miles in length, which extends from Drake, Ariz., a point 21 miles south of Ash Fork on the Maricopa-Phoenix line.

Yuma, Tucson, and Bowie are on the main line of the Southern Pacific. Safford and Globe are on a branch line of that carrier extending from Bowie. Clifton is on a branch line of the same carrier extending from Lordsburg. Bisbee and Douglas are served by the so-called southern lines of the Southern Pacific, formerly the El Paso & Southwestern.

The California points of production extend from San Francisco on the north to Los Angeles on the south. They include San Francisco and Crockett, the only two points at which Hawaiian cane sugar is refined, as well as all points at which beet sugar is produced. All California refining points take the same rates to Arizona destinations.

In *Maier & Co.* v. *Southern Pacific Co.*, 29 I. C. C. 103, decided January 6, 1914, a rate on sugar from Los Angeles and Los Alamitos, Calif., to Benson, Ariz., of 60 cents, minimum 36,000 pounds, was prescribed. This was the contemporaneous rate to El Paso, a point more distant than Benson on the same line. The 60-cent rate was established generally to main-line Southern Pacific and Santa Fe points in Arizona and New Mexico, and the San Francisco rate was made 10 cents higher.

In *Fourth Section Violations in Rates on Sugar*, 31 I. C. C. 511, we denied authority to continue rates on sugar from San Francisco and other sugar-producing points in California to Trinidad, Colo., and other points east thereof, which were lower than the rates concurrently applicable on like traffic to intermediate points on the line of the Santa Fe, and also denied authority to the Southern Pacific, El Paso

& Southwestern, and Chicago, Rock Island & Pacific to continue lower rates on sugar from the points of production described to the Missouri River than the rates concurrently applicable to intermediate points west of Tucumcari, N. Mex. In addition

(174) to making substantial reductions in the rates in connection with the minimum of 36,000 pounds, the carriers on November 15, 1914, established rates with a minimum of 60,000 pounds, from all California producing points to practically all Arizona points on a basis 5 cents lower than the rates from Los Angeles to the same destinations upon the lower minimum.

In *Arizona Corporation Commission* v. *A., T & S. F. Ry. Co.*, 34 I. C. C. 158, the rates from California to Phoenix and Prescott were found to be unreasonable to the extent that they exceeded the rates to the main-line junction points by more than 5 cents. As a result, on May 1, 1916, the rates from California to Phoenix and Prescott became 60 cents, minimum 60,000 pounds, and 65 cents minimum 36,000 pounds. On June 25, 1918, the main-line rates were increased 25 per cent to 69 and 75 cents, respectively, and the Phoenix and Prescott rates became 75 and 81.5 cents. Subsequently a flat increase of 22 cents was substituted for the percentage increase and the rates to main-line points became 77 and 82 cents on November 25, 1919, and to Phoenix and Prescott 82 and 87 cents on February 18, 1920.

On February 29, 1920, the carriers cancelled the rates to main-line and branch-line points under the

lower minimum weight published in connection with roads under Federal control and, as to such roads, increase the Phoenix and Prescott rate under the minimum of 60,000 pounds to 83.5 cents. This cancellation, as to nonfederal lines, was found justified in *Sugar from California Points to Arizona,* 58 I. C. C. 737.

On August 26, 1920, the rates on sugar from California, minimum 60,000 pounds, became 96.5 cents to main-line points and $1.045 to Phoenix and Prescott. In *Phoenix Chamber of Commerce* v. *Director General,* 62 I. C. C. 412, decided June 22, 1921, the Phoenix rate was found unreasonable to the extent that it exceeded 96.5 cents, and reparation was awarded on that basis. On June 27, 1921, the carriers reduced the main-line rates to 96 cents, and on September 17, 1921, that rate was established to both Phoenix and Prescott. All of these rates were reduced on July 1, 1922, to 86.5 cents.

In *United Verde Mining Co.* v. *A., T. & S. F. Ry. Co.,* 88 I. C. C. 5, the rates on classes and commodities, including sugar, from California, among other origin territories, to Clarkdale were found unreasonable to the extent that they exceeded the contemporaneous rates to Drake, and on October 16, 1922, the rate on sugar from California to Clarkdale was reduced from $1.16 to 86.5 cents.

In *Sugar Cases of 1922,* 81 I. C. C. 448, fourth-section relief authorized in *Fourth Section Violations in Rates on Sugar, supra,* permitting lower rates to Chicago, Ill., and other points in the Middle

(175) West than to intermediate points, was withdrawn. In the revision following this decision the rate to Chicago, minimum 80,000 pounds, became 84 cents, and this rate was established at intermediate points, including Gallup and main-line Southern Pacific and Santa Fe points in Arizona, but in connection with a minimum of 60,000 pounds. The same rate and minimum were established to Phoenix, Prescott, and Clarkdale.

In our original report in No. 14449 we again considered the rate from California points to Phoenix and found it to have been and to be unreasonable to the extent that it exceeded 79 and 71 cents, respectively, prior and subsequent to July 1, 1922. Reparation was awarded on that basis. The 71-cent rate was established to Phoenix and to intermediate points on the Southern Pacific and on the route of the Santa Fe over the Parker cut-off, effective February 25, 1925. In our original report in No. 14140, *Solomon-Wickersham Co.* v. *S. M. V. R. R. Co.*, 101 I. C. C. 667, reopened and here before us on argument, the rate on sugar from California points to Bowie was found to have been and to be unreasonable to the extent that it exceeded 83 and 75 cents, respectively, before and after July 1, 1922. Reparation was awarded on that basis. The reduced rate was established to Bowie and to Tucson, an intermediate point, effective October 27, 1925. The reduction to Bowie was 9 cents, and on the date named the Southern Pacific made reductions of the same amount to Safford and Globe, resulting in rates of 80.5 and 85.5 cents, respectively. No change was made in the Clifton rate of 94.5 cents.

Summarized, the present rates, minimum 60,000 pounds, are 71 cents to Yuma and Phoenix, 75 cents to Tucson and Bowie, 80.5 cents to Safford, 84 cents to Kingman, Williams, Flagstaff, Winslow, Holbrook, Prescott, Clarkdale, Bisbee, Douglas, and Gallup, 85.5 cents to Globe, and 94.5 cents to Clifton.

The general transportation conditions from California to Arizona are fully discussed in the cases cited and also in *Arizona Corporation Commission* v. *A. E. R. R. Co.*, 113 I. C. C. 52, and will be further discussed here. The latter case has since been reopened. In *Arizona Cattle Growers Asso.* v. *A. Ry. Co.*, 101 I. C. C. 181, division 4 approved of prescribed rates on cattle, in carloads, from points in Arizona to points in California which were approximately 20 per cent higher than the corresponding rates for like distances in Oklahoma and Texas. The same level of rates was approved or prescribed in that case from branch-line as from main-line points in Arizona.

In Nos. 16742, 16770, and 16770 (Sub-Nos. 1 to 9) counsel asks reparation on shipments to Phoenix on the basis of 71 cents, and contends that rates to the other destinations should be graded like (176)

the rate to Bowie prescribed in the first report in No. 14149, or else that there should be reasonable groupings. In Nos. 17549, 17549 (Sub-No. 1), and 17466 counsel contends that the origin group should be divided into two parts, the first to include Los Angeles, Dyer, Los Alamitos, San Pedro, and Oxnard, and the second San Francisco, Betteravia, Spreckles, Tracy, Alvarado, and Crockett. The

principal counsel in the latter cases is also counsel for complainants in No. 16770 (Sub-Nos. 6, 7, and 8). The rates now suggested from the proposed southern group are 54 cents to Phoenix, Tucson, and Clarkdale, 59 cents to Bisbee, and 64 cents to Clifton, and rates 10 cents higher from the proposed northern group.

The rate of 71 cents to Phoenix prescribed in the original report in No. 14449 was based on a distance of 625 miles, which is approximately one-half of the sum of the short-line distances from Los Angeles and San Francisco. Reference was made in that report to the fact that under the distance scale on sugar prescribed in *Memphis-Southwestern Investigation,* 77 I. C. C. 473, for application in the general territory comprising Louisiana west of the Mississippi River, Arkansas, and southern Missouri, the rate for 625 miles is 58 cents. The rate of 71 cents prescribed is about 121 per cent of 58 cents.

The rates proposed by complainants are lower than 121 per cent of the Memphis-Southwestern scale, and in justification thereof complainants point to the fact that the minimum weight prescribed in connection with that scale is 36,000 pounds, as compared with 60,000 pounds under the rates assailed. In *Oklahoma Traffic Asso.* v. *A. G. S. R. R. Co.,* 113 I. C. C. 635, the Memphis-Southwestern scale was prescribed on sugar from New Orleans, La., and points in Louisiana taking the same rates, and from Sugarland and Texas City, Tex., to points in Oklahoma, subject to a minimum of 60,000 pounds.

Defendants are opposed to a disturbance of the origin grouping and to grading of rates at desti-

nation. They contend that because of the competitive situation the present origin and destination groupings are of advantage to producers and distributors of sugar. However, if the rates are to be graded at destination they favor breaking up the origin blanket into two groups. Defendants subscribe to a basis of rates from California to Arizona which is about 121 per cent of the rates for the same distances under the Memphis-Southwestern scale, provided that the rates to Arizona points are based upon the weighted-average haul.

As stated, the only California points at which cane sugar is refined are San Francisco and Crockett. The southern California distributors of beet sugar stock a limited amount of cane sugar in order to fill orders for mixed carloads containing certain

varieties of sugar (177) not obtainable at beet-sugar refineries. The production of beet sugar in California during 1925 was as follows:

Producing point	Quantity	Producing point	Quantity
	Tons		*Tons*
Dyer	9,095	Tracy	8,297
Los Alamitos	2,010	Alvarado	9,580
Oxnard	15,310		
Betteravia	18,559	Total	92,917
Spreckles	30,066		

The production at the southern California points of Dyer, Los Alamitos, and Oxnard was 28.43 per cent of the total production for the State during 1925. In addition there was a substantial movement of sugar by water to San Pedro, Calif.

During the past several years, due to blight, drought, and the use for other purposes of land for-

merly planted in beets, there has been a substantial diminution in the amount of beet sugar produced in southern California and, as a consequence, a reduction in the number of refineries. The following table, giving movements from California refineries on the Southern Pacific to destinations in Arizona and New Mexico and to El Paso, shows that there has been a substantial reduction, both in the volume of movement from southern California to the territory of destination described and in the ratio such tonnage bears to the tonnage from northern California:

	Northern California			Southern California		
	Cars	Tons	Per cent	Cars	Tons	Per cent
Year 1921	187	5,920	24	265	8,519	76
Year 1922	188	5,920	39.4	265	8,423	70.6
Year 1923	247	7,754	72.9	67	2,129	27.1
Year 1924	313	9,856	86	44	1,415	14
Year 1925	504	15,615	95.5	23	714	4.5

In addition to the above there were shipments of sugar from San Francisco over the Santa Fe to destinations on its own line west of Albuquerque. In 1925 they amounted to 107 cars, weighing 3,029 tons. This additional tonnage changes the percentages for 1925 to 96.3 per cent from northern California and 3.7 per cent from southern California. Of the total of 611 cars from northern California, 227 moved from San Francisco and 370 from Crockett. The weight of the shipments from these two points aggregated 18,490 tons. Only 14 cars moved from other northern California points, of which 11 moved from Spreckles and 3 from Betteravia.

We have upon this record no serious contention from producers, distributors, or consumers that a breaking up of the present extensive (178)

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origin and destination groupings would be detrimental to their interests. Bearing in mind the length of time during which the present California group has existed and the fact that until recent years the movement has been substantial from both northern and southern California, we do not find that group as such to have been or to be unreasonable; but in view of the fact that most of the movement now is from two of the most distant points of shipment, an origin group approximately 500 miles in length is no longer justified. A more reasonable adjustment for the future would seem to require the breaking up of the origin territory into two groups, the northern group extending from San Francisco and Crockett on the north to Spreckles on the south, and the southern group extending from Betteravia on the north to Dyer on the south.

Since the hearings in these cases we have decided *Consolidated Southwestern Cases*, 123 I. C. C. 203, in which new distance scales of rates were prescribed for application on classes and commodities generally throughout the Southwest. The scale on sugar prescribed in those cases, hereinafter referred to as the southwestern scale, is 30 per cent of the first-class rates therein prescribed and will apply in connection with a minimum

weight of 60,000 pounds. The following table shows the average short-line distances from the southern and northern groups to points or groups of destination and compares the rates proposed by certain of complainants with rates on basis of 120 per cent of the southwestern scale for like distances:

	From southern group			From northern group		
	Distance	Complainants' proposed rates	120% of southwestern rates	Distance	Complainants' proposed rates	120% of southwestern rates
	Miles	*Cents*	*Cents*	*Miles*	*Cents*	*Cents*
From Group 1 to Yuma, Ariz.	267	40	45.5	637	50	72
From Group 2 to Kingman, Ariz.	388	47	56.5	645	57	73
From Group 3 to Phoenix, Ariz.	467	55	61	749	65	79
From Group 4 to—						
Tucson, Ariz.	519	.....	.....	847	.....	.....
Prescott, Ariz.	526	.....	.....	782	.....	.....
Williams, Ariz.	527	.....	.....	783	.....	.....
Flagstaff, Ariz.	561	.....	.....	818	.....	.....
Clarkdale, Ariz.	563	.....	.....	820	.....	.....
Group average	539	55	65	810	65	83
From Group 5 to—						
Winslow, Ariz.	619	.....	.....	876	.....	.....
Bisbee, Ariz.	628	.....	.....	966	.....	.....
Bowie, Ariz.	634	.....	.....	961	.....	.....
Douglas Ariz.	643	.....	.....	971	.....	.....
Holbrook, Ariz.	652	.....	.....	909	.....	.....
Group average	635	59	72	935	69	89
From Group 6 to—						
Safford, Ariz.	674	60	74.5	1,001	70	92
From Group 7 to—						
Gallup, N. Mex.	747	.....	.....	1,004	.....	.....
Clifton, Ariz.	753	.....	.....	1,081	.....	.....
Globe, Ariz.	758	.....	.....	1,085	.....	.....
Group average	752	64	79	1,057	74	95

(179) No. 16670 (Sub-No. 7) brings in issue the reasonableness of the rates from Colorado and Kansas refineries to Gallup, and contains a prayer for reparation on shipments subsequent to March 31, 1923. Prior to June 25, 1918, the rate on sugar from transcontinental Group E, which includes New Orleans, to Pacific coast points was 85 cents, minimum 60,000 pounds, and this rate applied as maximum from Kansas and Colorado points. The general increases and reduction resulted in rates from Colorado and Kansas, respectively, to Arizona points on the Santa Fe of $1.195 and $1.28, the difference resulting from general increases of 25 and 33⅓ per cent, respectively, from Colorado and Kansas on August 26, 1920. At the time of the hearing the fifth-class rate of $1.145 was applicable on sugar from Colorado refineries to Gallup. At that time a commodity rate of 75 cents applied from Colorado points to Albuquerque, and on August 1, 1925, the present commodity rate of 84 cents, minimum 60,000 pounds, was established from the same points to Gallup. The present rate to Albuquerque is 76 cents, and the same rate applies from Denver and Pueblo, Colo., to El Paso. To Fort Worth, Tex., the rate is 72 cents, minimum 36,000 pounds.

The record fails to show any movement, actual or prospective, from Kansas, and the rates from that State will not be further considered.

The Colorado points of origin are shown by complainant as including Denver, Fort Collins, Greeley, Holly, Lamar, Longmont, Loveland, Las

Animas, Lupton, Rocky Ford, Swink, and Windsor. The Santa Fe, which is the only carrier serving the Colorado group named as defendant herein, carries rates to points on its line in Arizona and New Mexico only from Holly, Lamar, Las Animas, Rocky Ford, and Swink. The average distance from the group to Gallup is shown by complainants as 625 miles. Complainant in No. 16670, (Sub-No. 7) showed only seven shipments from Colorado to Gallup since March 31, 1923; six from Swink, and one from Rocky Ford.

The rates herein prescribed under section 1 will remove any undue prejudice which may exist in the rates assailed, and no findings with respect to the allegations under section 3 are necessary.

The evidence shows that all of the complainants, except the C. N. Cotton Company, made or received shipments of sugar as described, and paid and bore the charges thereon.

Defendants call attention to the fact that in our original report in No. 14449 we awarded reparation on shipments which moved to Phoenix on a rate 0.5 cent less than the rate prescribed as reasonable by us from and to the same points in *Phoenix Chamber of Commerce* (180) v. *Director General, supra,* 140 I. C. C. referred to as the first Phoenix case, and that the period of reparation in the former case extended back approximately four months prior to the date when the latter case was decided. Defendants contend that they should not be required to pay reparation on shipments which moved

under rates approved or prescribed by us. We have several times announced that the doctrine of *res adjudicata* is not applied by us. *Goss* v. *Director General,* 73 I. C. C. 649. We reserve the right, upon a more comprehensive record, to modify our previous findings, whether in the same or a previous case, upon matters directly in issue before us as to which it clearly appears that our previous findings would not accord substantial justice under the laws which we administer. We have such a case here. For the first time the record before us is comprehensive in the evidence which it contains bearing upon the reasonableness of the rates assailed. Upon this record we reach the conclusion that the rate prescribed in the first Phoenix case, during the period embraced in these complaints, was unreasonable and that a lower rate would have been reasonable during that period. If we are within our authority in finding that a lower rate would have been reasonable, then it must follow that shippers who paid the freight charges at the higher rate paid charges which were unreasonable, and are entitled to reparation upon adequate proof that they paid or bore such charges.

We find that the assailed rate, minimum 60,000 pounds, from Holly and other Santa Fe points in Colorado grouped therewith to Gallup was, is, and will be unreasonable to the extent that it exceeded, exceeds, or may exceed 72 cents. We further find that the assailed rates, minimum 60,000 pounds, from California points were, are, and will be unreasonable to the extent that they exceeded, ex-

ceed, or may exceed, respectively, the following, in cents per 100 pounds:

Prior to July 1, 1922, to Phoenix 79 cents from the southern California group and 81 cents from the northern California group and to Bowie 83 cents from the southern California group and 93 cents from the northern California group; on and between July 1, 1922, and the effective date of the rates herein prescribed for the future, from the southern California group and the northern California group, respectively, 66 and 66 cents to Yuma, 68 and 69 cents to Kingman, 71 and 73 cents to Phoenix, 73 and 77 cents to Prescott, Williams, Tucson, Flagstaff, and Clarkdale, 75 and 84 cents to Winslow, Holbrook, Bisbee, Bowie, and Douglas, 77 and 87 cents to Safford, and 79 and 89 cents to Gallup, Clifton, and Globe; and for the future as follows:

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To—	From southern California group *Cents*	From northern California group *Cents*	To—	From southern California group *Cents*	From northern California group *Cents*
Yuma, Ariz.	46	66	Bisbee, Ariz.	72	84
Kingman, Ariz.	57	69	Bowie, Ariz.	72	84
Phoenix, Ariz.	61	73	Douglas, Ariz.	72	84
Tucson, Ariz.	65	77	Holbrook, Ariz.	72	84
Prescott, Ariz.	65	77	Safford, Ariz.	75	87
Williams, Ariz.	65	77	Gallup, N. Mex.	79	89
Flagstaff, Ariz.	65	77	Clifton, Ariz.	79	89
Clarkdale, Ariz.	65	77	Globe, Ariz.	79	89
Winslow, Ariz.	72	84			

We further find that the complainants, except the C. N. Cotton Company, made shipments as described at the rates herein found to have been unreasonable; that they paid and bore the charges thereon and were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found to have been reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice. No reparation orders have been issued in Nos. 14449 and 14140, and complainants in those cases should submit to the carriers new statements in compliance with Rule V referred to.

Our original order in No. 14449 and the order of division 3 in No. 14140 will be modified in conformity with the foregoing conclusions, and appropriate orders for the future will be entered in other cases disposed of in this report.

TAYLOR, *Commissioner,* concurring in part:

I dissent from so much of this report as finds the rates unreasonable in the past and awards reparation.

Commissioner PORTER did not participate in the disposition of this case.

ORDERS

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of March, A. D. 1928

No. 16770

Bashford-Burmister Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 1)

Central Commercial Company

v.

Same

No. 16770 (Sub-No. 2)

Wheeler Perry Company

v.

Santa Maria Valley Railroad Company and Southern Pacific Company

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No. 16770 (Sub-No. 3)

T. F. Miller Company

v.

The Atchison, Topeka & Santa Maria Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 4)

E. F. Sanguinetti

v.

Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

(I)

No. 16770 (Sub-No. 5)

Arizona Grocery Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 6)

Arizona Wholesale Grocery Company

v.

Arizona Eastern Railroad Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

No. 16770 (Sub-No. 7)

C. N. Cotton Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Pacific Electric Railway Company; Rio Grande, El Paso and Santa Fe Railroad Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

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No. 16770 (Sub-No. 8)

Babbitt Brothers Trading Company; Arizona Stores Company; Babbitt Brothers Company; and Babbitt Brothers

v.

Same

No. 16770 (Sub-No. 9)

Wm. H. Dagg Mercantile Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 17549

Phelps Dodge Mercantile Company

v.

The Atchison, Topeka & Santa Fe Railway Company; El Paso & Southwestern Railroad Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

(II)

No. 17549 (Sub-No. 1)

Baffert & Leon

v.

The Atchison, Topeka & Santa Fe Railway Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

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No. 17466

United Verde Extension Mining Company

v.

Same

No. 17781

Simpson-Ashby Company

v.

Southern Pacific Company

These cases being at issue upon complaints, as amended, and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date

hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to points in Arizona, referred to in the next succeeding paragraph hereof, and to Gallup, N. Mex., and from points in Colorado, referred to in the second succeeding paragraph hereof, to Gallup, which shall exceed the rates hereinafter prescribed.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, from the following California groups, as defined in the report made a part hereof, to the Arizona and New Mexico destinations named below, rates, minimum weight 60,000 pounds, which shall not exceed the following, in cents per 100 pounds:

To—	From southern California group *Cents*	From northern California group *Cents*
Yuma, Ariz.	46	66
Kingman, Ariz.	57	69
Phoenix, Ariz.	61	73
Tucson, Ariz.	65	77
Prescott, Ariz.	65	77
Williams, Ariz.	65	77
Flagstaff, Ariz.	65	77
Clarkdale, Ariz.	65	77
Winslow, Ariz.	72	84

To—	From southern California group *Cents*	From northern California group *Cents*
Bisbee, Ariz.	72	[illegible]
Bowie, Ariz.	72	[illegible]
Douglas, Ariz.	72	[illegible]
Holbrook, Ariz.	72	[illegible]
Safford, Ariz.	75	[illegible]
Gallup, N. Mex.	79	[illegible]
Clifton, Ariz.	79	[illegible]
Globe, Ariz.	79	[illegible]

It is further ordered, That said defendants in No. 16670 (Sub-No. 7), according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, from Holly, Lamar, Rocky Ford, and Swink, Colo., and other points on the Atchison, Topeka & Santa Fe Railway in Colorado taking the same rates, to Gallup, N. Mex., a rate which shall not exceed 72 cents per 100 pounds, minimum weight 60,000 pounds.

And it is further ordered, That these orders shall continue in force until the further order of the commission.

SUPPLEMENTAL ORDERS

No. 14449

Traffic Bureau of the Phoenix Chamber of Commerce; Haas-Baruch & Company; Hall-Pollock Company; The Melczer Company; and James A. Dick Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Arizona Eastern Railroad Company

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No. 14140

Solomon-Wickersham Company

v.

Santa Maria Valley Railroad Company and Southern Pacific Company

These cases having been reopened for oral argument jointly with No. 16742, *Traffic Bureau of the Phoenix Chamber of Commerce et al.*, v. *A., T. & S. F. Ry. Co. et al.*, and cases consolidated therewith, and such oral argument having been had, and the commission having, on the date hereof, made and filed a new report containing its findings of fact and

(IV)

conclusions thereon, which said report, together with the previous reports herein, 95 I. C. C. 244 and 101

I. C. C. 667, are hereby referred to and made a part hereof:

It is ordered, That the order entered in No. 14449 on January 6, 1925, and the order entered in No. 14140 on July 17, 1925, be, and they are hereby, modified so that the second and third paragraphs thereof will read, respectively, as follows:

It is ordered, That the above-named defendants in No. 14449, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California, to Phoenix, Ariz., which shall exceed the rates prescribed in the next succeeding paragraph hereof.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, rates to Phoenix, Ariz., minimum weight 60,000 pounds, which shall not exceed 61 cents per 100 pounds from points in the southern California group, as defined in the report of this date made a part hereof, and 73 cents per 100 pounds from points in the northern California group, as defined in the said report.

It is ordered, That the above-named defendants in No. 14140, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and hereafter to abstain, from publshing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to Bowie, Ariz., which shall exceed the rates prescribed in the next succeeding paragraph hereof.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, rates to Bowie, Ariz., minimum weight 60,000 pounds, which shall not exceed 72 cents per 100 pounds from the southern California group, as defined in the report of this date made a part thereof, and 84 cents per 100 pounds from the northern California group, as defined in the said report.

And it is further ordered, That these supplemental orders shall continue in force until the further order of the commission.

By the commission.

[Seal] GEORGE B. McGINTY,
Secretary.

(V)

U. S. Government Printing Office: 1928 [23]

EXHIBIT "C."

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 11th day of March, A. D. 1929.

No. 16742.

Traffic Bureau of Phoenix Chamber of Commerce, et al.,

v.

The Atchison, Topeka & Santa Fe Railway Company, et al.

It appearing, That on March 12, 1928, the commission entered its report in the above entitled proceeding, which report is hereby referred to and made a part hereof, and this proceeding now coming on for further consideration on the question of reparation, and the parties having filed agreed statements with respect to the shipments in question, showing, among other things, the dates on which payment of the charges assailed was made; we find that complainant is entitled to awards of reparation from the defendants named in the following table, in the amounts set opposite their respective names, with interest.

Defendants.	Amounts.
The Atchison, Topeka & Santa Fe Railway Company	$2,203.55
Bay Transport Company, and The Atchison, Topeka & Santa Fe Railway Company	1,251.02
Southern Pacific Company, and The Atchison, Topeka & Santa Fe Railway Company	297.04
Southern Pacific Company	2,104.58
Santa Maria Valley Railroad Company, and Southern Pacific Company	359.75

It is therefore ordered, That the defendants, named in each of the groups shown in the above table, be, and they are hereby, authorized and directed to pay unto the complainant, Arizona Grocery Company, on or before April 26, 1929, the amounts set opposite their respective names in said table, with interest thereon at the rate of six per cent per annum, from the respective dates of payment of the charges *assaield* shown in the aforesaid agreed statements, as reparation in account of unreasonable rates charged for the transportation of numerous carloads of sugar, from California points to destinations in Arizona and from California and Colorado points to Gallup, N. Mex.

By the commission.

(Seal) GEORGE B. McGINTY,
Secretary. [24]

Endorsement on Complaint: Law–696—Phx. Filed Oct. 16, 1929. [25]

[Title of Court and Cause—No. L.-695—Phoenix.]

Action brought in said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City of Phoenix and County of Maricopa.

SUMMONS.

The President of the United States of America, GREETING: To Atchison, Topeka & Santa Fe Railway Company, Bay Transport Company, and *Souther* Pacific Company, Defendants.

YOU ARE HEREBY DIRECTED TO APPEAR, and answer the complaint in an action entitled as above, brought against you in the District Court of the United States, in and for the District of Arizona, within twenty days after the service on you of this summons—if served within this county; or within thirty days of served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiff will take judgment for any money or damages demanded in the complaint, as arising upon contract, or it will apply to the Court of any other relief demanded in the complaint.

WITNESS: The Honorable JEREMIAH NETERER, Judge of said District Court, this 16th day of October, in the year of our Lord one thousand

nine hundred twenty-nine and of our Independence the one hundred and fifty-fourth.

[Seal of United States District Court, District of Arizona.]

C. R. McFALL,
Clerk.
By Thos. O. Bishop,
Deputy Clerk. [26]

Endorsement on foregoing Summons:

United States Marshal's Office,
District of Arizona.

I HEREBY CERTIFY that I received the within writ on the 25 day of Oct., 1929, and personally served the same on the 25 day of Oct., 1929, upon Atchison Topeka and Santa Fe Railway Company and Southern Pacific, a Corporation by delivering to, and leaving with L. H. Chalmers, attorney for A. T. & S. F. Ry. Co., L. B. Whitney of Baker & Whitney Attys. for S. P. Co., a Corp. Said defendant named therein personally, at the Maricopa County of ———— in said District, a certified copy thereof, together with a copy of the complaint, certified to by C. R. McFall attached thereto.

G. A. MAUK,
U. S. Marshal,
By A. E. Frankforter,
Office Deputy.

Oct. 25, 1929.

Filed Oct. 28, 1929. [27]

[Title of Court and Cause—No. L.-695—Phoenix.]

SUMMONS.

Action brought in said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City of Phoenix and County of Maricopa.

The President of the United States of America, GREETING: To Bay Transport Company, a Corporation, Pier #38, San Francisco, California, Defendant.

YOU ARE HEREBY DIRECTED TO APPEAR, and answer the complaint in an action entitled as above, brought against you in the District Court of the United States, in and for the District of Arizona, within 20 days after the service on you of this summons—if served within this county; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiff will take judgment for any money or damages demanded in the complaint, as arising upon contract, or it will apply to the Court for any other relief demanded in the complaint.

WITNESS: The Honorable JEREMIAH NETERER, Judge of said District Court, this 16th day of October, in the year of our Lord one thousand

nine hundred and twenty-nine and of our Independence the one hundred and fifty-fourth.

[Seal United States District Court, District of Arizona]

C. R. McFALL,
Clerk.
By Thos. O. Bishop,
Deputy Clerk. [28]

Endorsement on the foregoing Summons:

UNITED STATES MARSHAL'S RETURN.

Returned unexecuted by request of Attorney Frank L. Snell, Jr.

FRED L. ESOLA,
United States Marshal,
Northern District of Calif.,
By Fred T. Field,
Deputy.

San Francisco, Calif., Dec. 5th, 1929.

Filed Dec. 9, 1929. [29]

[Title of Court and Cause—No. L.-696—Phoenix.]

SUMMONS.

Action brought in said District Court, and the Complaint filed in the office of Clerk of Said District Court, in the City of Phoenix and County of Maricopa.

The President of the United States of America, GREETING: To Southern Pacific Company and Santa Maria Valley Railroad Company, Defendants.

YOU ARE HEREBY DIRECTED TO APPEAR, and answer the complaint in an action entitled as above, brought against you in the District Court of the United States, in and for the District of Arizona, within twenty days after the service on you of this summons—if served within this county; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required the said plaintiff will take judgment for any money or damages demanded in the complaint, as arising upon contract, or it will apply to the court for any other relief demanded in the complaint.

WITNESS: The Honorable JEREMIAH NETERER, Judge of said District Court, this 16th day of October, in the year of our Lord one thousand nine hundred and twenty-nine and of our Independence the one hundred and fifty-fourth.

[Seal of United States District Court, District of Arizona]

C. R. McFALL,
Clerk.
By Thos. O. Bishop,
Deputy Clerk. [30]

Endorsement on the foregoing summons:

United States Marshal's Office,
District of Arizona.

I HEREBY CERTIFY that I received the within writ on the 25 day of Oct., 1929, and personally served the same on the 25 day of Oct., 1929, upon Southern Pacific Company by delivering and

leaving with Louis B. Whitney, attorney for the Southern Pacific R. R. Co., said defendant named therein personally, at *the Phoenix,* County of Maricopa in said District, a certified copy thereof, together with a copy of the complaint, certified to by C. R. McFall attached thereto.

G. A. MAUK,
U. S. Marshal.
By A. E. Frankforter,
Office Deputy.

Oct. 25, 1929.
Filed Oct. 28, 1929. [31]

[Title of Court and Cause—No. L.-696—Phoenix.]

SUMMONS.

Action brought in said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City of Phoenix, and County of Maricopa.

The President of the United States of America, GREETING: To Santa Maria Valley Railroad Company, a Corporation, Santa Maria, California, Defendant.

YOU ARE HEREBY DIRECTED TO APPEAR, and answer the complaint in an action entitled as above, brought against you in the District Court of the United States, in and for the District of Arizona, within 20 days after the service on you of this summons—if served within this county; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plain-

tiff will take judgment for any money or damages demanded in the complaint, as arising upon contract, or it will apply to the Court for any other relief demanded in the complaint.

WITNESS: The Honorable JEREMIAH NETERER, Judge of said District Court, this 16th day of October, in the year of our Lord one thousand nine hundred and twenty-nine and of our Independence the one hundred and fifty-fourth.

[Seal United States District Court, District of Arizona]

C. R. McFALL,
Clerk.
By Thos O. Bishop,
Deputy Clerk. [32]

Endorsement on the foregoing Summons:

United States Marshal's Office,
District of Arizona.

I HEREBY CERTIFY that I received the within writ on the 9th day of Nov. 1929, and personally served the same on the 9th day of November, 1929, upon Santa Maria Valley Railroad Co. by delivering to, and leaving with J. M. Davis, auditor of same said defendant named therein personally, at the county of Santa Barbara in said district, a certified copy thereof, together with a copy of the complaint, certified to by C. R. McFall attached thereto.

Marshal's Fees .....$ 2.00
Mileage Expenses $13.75

Total $15.75

A. C. SITTEL,
U. S. Marshal.
By Charles E. Rice,
Office Deputy.

November 9th, 1929.
Marshal's Civil Docket No. 10182.

Filed Nov. 16, 1929. [33]

[Title of Court and Cause—No. L.-695—Phoenix.]

DEMURRER.

Now come the defendants in the above-entitled action and demur to the complaint filed therein, and for ground of demurrer allege that said complaint does not, upon its face, set forth facts sufficient to constitute a cause of action.

Dated: November 25th, 1929.

BAKER & WHITNEY,
CHALMERS FENNEMORE & NAIRN,
Attorneys for Defendants.

E. W. CAMP,
JAMES E. LYONS,
JAMES BURTON MASON,
Counsel.

Copy received November 25, 1929.

ELLIOTT & SNELL,
Attorneys for Plaintiff.

Filed Nov. 25, 1929. [34]

[Title of Court and Cause—No. L.-696—Phoenix.]

DEMURRER.

Now come the defendants in the above-entitled action and demur to the complaint filed therein, and for ground of demurrer allege that said complaint does not upon its face set forth facts sufficient to constitute a cause of action.

WHEREFORE, defendants pray that the complaint be dismissed and that they recover their costs in this case expended or incurred.

BAKER & WHITNEY,
317 Fleming Building, Phoenix, Arizona,
Attorneys for Defendants.

JAMES E. LYONS,
A. BURTON MASON,
San Francisco, California,
Of Counsel.

Received copy of the within this 25th day of November, 1929.

ELLIOTT & SNELL,
Attorney for Plaintiff.

Filed Nov. 25, 1929. [35]

[Title of Court and Cause—No. L.-695—Phoenix.]

ANSWER.

Now come the defendants in the above-entitled action and for their joint and several answer to the complaint filed therein admit, allege and deny as follows:

I.

They have no information and belief sufficient to enable them to answer the allegations contained in paragraph I of said complaint or any of them, and upon said grounds deny each and all of the allegations thereof.

II.

They admit the allegations of paragraphs numbered II, III, V, and VIII of said complaint.

III.

They admit the allegations of paragraph IV of said complaint except that they deny that said freight charges or any of them paid by plaintiffs were or was or are or is unreasonable or in violation of the Interstate Commerce Act [36] as alleged in said complaint, or otherwise, and defendants deny further that the just or reasonable freight rates which should have been charged upon any or all of the plaintiff's said shipments from Crockett or from San Francisco or from Spreckels to Phoenix, Arizona, or from either of said points of origin after July 1, 1922, was 73¢ per hundred pounds or any other sum less than the sum charged by these defendants.

IV.

Answering paragraph VI of said complaint defendants deny that the Interstate Commerce Commission found at any time that said rates of 86½¢ per hundred pounds and 84¢ per hundred pounds, or either of them, were or was unreasonable to the extent alleged or to any extent at all, but they admit that said Commission did undertake to find whether said rates had been unreasonable to the extent that they exceeded 73¢ per hundred pounds from Crockett, and from San Francisco, and from Spreckels, California, to Phoenix, but defendants allege that said finding was, as to plaintiff's shipments which had been made prior to the rendition and issuance of said decision, beyond the jurisdiction of said Commission and void, as is hereinafter more particularly set forth.

V.

Defendants admit that the Interstate Commerce Commission did undertake to make an order substantially as alleged in paragraph VII of said complaint, but defendants [37] allege that said order was beyond the jurisdiction of said Commission and without statutory or other authority as is hereinafter more particularly set forth.

VI.

Defendants deny each and all of the allegations contained in paragraph IX of said complaint.

VII.

Answering paragraph X of said complaint defendants deny that the sum of $1500.00 or any other

sum or amount whatsoever is or would be a reasonable attorney's fee to be allowed by the Court in this action.

VIII.

Defendants further show and allege that said orders of said Commission in so far as they authorize, direct or command payment of reparation upon the plaintiff's said shipments were and are beyond the power and jurisdiction of said Commission and without any warrant or authority whatsoever for the reason that the rates which were charged and collected upon plaintiff's said shipments as set forth in said complaint had previously been established and declared to be not unreasonable by said Commission after formal investigation, or were less in amount than rates which had been specifically prescribed and declared by said Commission to be reasonable after such formal investigation; and that said rates were charged and collected pursuant to the authority and approval of said Commission.

In that behalf defendants show that heretofore the [38] Traffic Bureau of the Phoenix Chamber of Commerce and certain other persons, firms and corporations as complainants instituted a proceeding before said Commission known as Docket 11,532, which said proceeding was duly heard by said Commission. In said docket said complainants attacked as unjust and unreasonable the rates on sugar in carloads from points in California to Phoenix, Arizona, including as points of origin San Francisco, Crockett, and Spreckels. After due hearing and investigation of said complaint said Commission made and rendered its report

and order dated June 22, 1921, and reported in Volume 62 of the official reports of said Commission at pages 412 and following, finding therein and thereby that the rates on sugar in carloads from points in California to Phoenix would for the future be unreasonable to the extent that they might exceed 96½¢ per hundred pounds, and ordering and directing that said rates be reduced for the future to a figure not exceeding said rate of 96½¢ per hundred pounds. And thereafter and on September 17, 1921, these defendants, together with certain other common carriers so engaged, voluntarily reduced said rate to 96¢ per hundred pounds, and that said last-mentioned rate was named in tariffs duly and regularly published and filed in accordance with law.

Said last-mentioned rate remained in effect until June 30, 1922, upon which date, in accordance with the recommendations made in a report of said Commission in a proceeding known as Docket 13,293, Reduced Rates, 1922, reported in Volume 68 of the Reports of said Commission, beginning at page 676, said rate was voluntarily reduced to 86½¢ per hundred pounds, and said last-mentioned rate was named in tariffs of said defendants and other carriers so engaged in interstate commerce, [39] duly and regularly filed with the Interstate Commerce Commission, and published in accordance with law.

Said last-mentioned rate remained in effect until on or about the 10th day of January, 1924; that on said last-mentioned date said rate was reduced to 84½¢ per hundred pounds in accordance with

recommendations made by said Commission in a proceeding entitled Sugar Cases of 1922, being Docket 13,098, decided on June 17, 1923, and reported in Volume 81 of said Commission's reports, beginning at page 448. That the said last-mentioned rate was duly and regularly established by these defendants and by other common carriers engaged in such commerce, and was named in tariffs duly and regularly published and filed in accordance with law.

That said last-mentioned rate remained in effect until February 25, 1925, upon which last-mentioned date said rate was reduced to 71¢ per hundred pounds, pursuant to and in compliance with a report and order of said Commission in a proceeding known as Docket 14,449, reported in Volume 95 of the reports of said Commission, beginning at page 244. In said last-mentioned proceeding the Traffic Bureau of the Phoenix Chamber of Commerce and certain corporations were complainants, and in said proceeding said complainants alleged that the rates on sugar from points in California to Phoenix were and in future would be unjust and unreasonable. In said last-mentioned proceeding, Docket 14,449, said Commission found and decided that said rates from California points to Phoenix had been unreasonable in the past to the extent that they exceeded 79¢ per hundred pounds before July 1, 1922, and 71¢ per hundred pounds subsequent to that date, and undertook to award reparation on shipments made by complainants in said proceeding to the extent that the charges [40] collected exceeded those which would have accrued at said rate

so declared to have been reasonable; and further required defendants in said proceeding, including these defendants and certain other common carriers by rail, to establish and maintain for the future rates not exceeding 71 cents per hundred pounds from said points of origin to Phoenix. Said last-mentioned rate was duly established in compliance with said order on February 25, 1925, as above set forth.

Thereafter said Commission reopened said proceeding Docket 14,449 in so far as its orders therein purported to award reparation and consolidating the same with a subsequent proceeding brought by the Traffic Bureau of Phoenix Chamber of Commerce and certain other persons, firms and corporations as complainants, known as Docket 16,742, which last-mentioned proceeding is referred to at length in the complaint of the plaintiff herein, and particularly in paragraphs V and VI thereof. Said proceeding resulted in the purported order on which the complaint herein is based.

IX.

Defendants allege and show that said order of said Commission, dated the 11th day of March, 1929, and purporting to order and direct these defendants to pay reparation to plaintiff upon said shipments set forth and referred to in Exhibit "A" annexed to said complaint, is null and void and of no effect, in that said Commission was and is without lawful jurisdiction and authority to make said order, for the following reasons, to wit:

(1) Said order purports to be issued pursuant to authority and jurisdiction conferred upon said Commission by the Interstate Commerce Act; but said Act does not vest said Commission [41] with jurisdiction and authority to award reparation with respect to charges collected upon the basis of rates which said Commission has theretofore specifically prescribed or approved as reasonable and just for the future by a continuing order or with respect to charges collected upon the basis of rates which are less in amount than rates so prescribed and/or approved as just and reasonable.

(2) If said Act is so construed as to vest such jurisdiction and authority in said Commission, it is to that extent unconstitutional, and any and all orders made in pursuance of said purported jurisdiction are likewise unconstitutional and void, because contrary to and forbidden by the 5th Amendment to the Constitution of the United States, and particularly those portions thereof which guarantee that no person shall be deprived of his property without due process of law, in that said order purports to condemn as unlawful and to award damages with respect to acts which, at the time of their performance, were lawful and expressly sanctioned by previous formal continuing orders of said Commission.

(3) Said order is based upon a mistake of law, in that the Commission has erroneously assumed jurisdiction which it does not possess.

(4) Said order is arbitrary and unjust, and contrary to the evidence in that it purports to award

damages for the collection of lawful tariff rates which were admittedly prescribed and established as just and reasonable by the Commission itself, or which were materially lower than the maximum reasonable rates so authorized and approved.

(5) Said order proceeds from the exercise of authority by the Commission in such an unreasonable, arbitrary and capricious manner as to cause it to be invalid, amounting to a [42] denial of the due process of law as guaranteed by the aforesaid 5th amendment.

(6th) Said order constitutes a collateral retroactive reversal of orders heretofore duly and regularly entered and made by said Commission, pursuant to its lawful jurisdiction and authority, which said collateral retroactive reversal is forbidden by, and contrary to, the provisions of the Interstate Commerce Act.

WHEREFORE, defendants allege and show that the Interstate Commerce Commission was and is without jurisdiction or statutory authority to order these defendants or any of them to pay reparation on account of rates or either of them so charged and collected, and that said alleged order of said Commission purporting to authorize and direct defendants to pay reparations to the plaintiff on account of said rates or any of them, is void and of no effect, and these defendants pray that the complaint be dismissed and that they be allowed their costs incurred herein.

Dated November 25th, 1929.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants.

E. W. CAMP,
JAMES E. LYONS,
JAMES BURTON MASON,
Counsel.

Copy received Nov. 25, 1929.

ELLIOTT & SNELL,
Attorneys for Plaintiff.

Filed Nov. 25, 1929. [43]

[Title of Court and Cause—No. L.-696—Phoenix.]

ANSWER TO COMPLAINT.

Now comes the defendants in the above-entitled action, and, for their joint and several answer to the complaint on file therein, admit, allege, and deny as follows:

I.

Allege that they have no information or belief sufficient to enable them to answer the allegations of paragraph I of said complaint, and upon said grounds they deny each and all of the allegations thereof.

II.

Said defendants admit the allegations of paragraphs II, III, V, and VIII, of said complaint.

III.

Said defendants admit the allegations of paragraph IV of said complaint, except that they deny that said freight charges of 86½ cents per 100 pounds, and 84 cents per 100 pounds, or either of them, were or was, or are or is, unreasonable as to the plaintiff, or in violation of the Interstate Commerce Act, as alleged in said complaint, or to any extent; and said defendants deny further that the just and/or reasonable freight rates which should have been charged upon any or all of plaintiff's said shipments from Crockett, California, [44] and San Francisco, California, to Phoenix, Arizona, or from either of said points of origin, after July 1, 1922, was 73 cents per 100 pounds, or that the just and/or reasonable freight rate which should have been charged upon any or all of plaintiff's said shipments from Oxnard, California, and/or Betteravia, California, or from either of said points of origin, to Phoenix, Arizona, after July 1, 1922, was 71 cents per 100 pounds, or that the just and/or reasonable freight rate which should have been charged upon all or any of plaintiff's said shipments was any other sum or rate than the lawful tariff rates which were severally applicable and which were charged upon each of said respective shipments.

IV.

Answering paragraph VI of said complaint, defendants deny that the Interstate Commerce Commission found at any time that said rates of 86½ cents per 100 pounds and 84 cents per 100 pounds, or

either of them, were or was unreasonable as to the plaintiff to the extent alleged, or to any extent at all; but they admit that said Interstate Commerce Commission did undertake to find whether said rates had been unreasonable to the extent that they exceeded 73 cents per 100 pounds from Crockett, California, and San Francisco, California, to Phoenix, Arizona, and 71 cents per 100 pounds from Oxnard, California, and Betteravia, California, to Phoenix, Arizona, but defendants allege that said finding was, as to plaintiff's shipments which had been made prior to the rendition and issuance of said decision, beyond the jurisdiction of said Commission and void, as in hereinafter more particularly set forth.

V.

Said defendants admit that, substantially as alleged in paragraph VII of said complaint, the Interstate Commerce Commission [45] did undertake to make an order as alleged in said paragraph; but defendants allege that said order was beyond the jurisdiction of said Commission, and without statutory authority, as is hereinafter more particularly set forth.

VI.

Said defendants deny each and all of the allegations contained and set forth in paragraph IX of said complaint.

VII.

Answering paragraph X of said complaint, said defendants deny that the sum of $1,000.00, or any other sum or amount whatsoever, is a reasonable

attorney's fee to be allowed by the court in this action.

VIII.

Defendants further show and allege that said orders of said Interstate Commerce Commission, in so far as they authorize direct and/or command payment of reparation upon the plaintiff's said shipments, were and are beyond the power and jurisdiction of said Commission, and without any statutory warrant or authority whatsoever, for the reason that the rates which were charged and collected upon plaintiff's said shipments, as set forth in said complaint, had previously been established by and declared to be reasonable by said Commission, after formal investigation, and/or were less in amount than rates which had been specifically prescribed and declared by said Commission to be reasonable, after such formal investigation; and that said rates were charged and collected pursuant to the authority and approval of said Commission.

In that behalf defendants show that heretofore the traffic Bureau of the Phoenix Chamber of Commerce and certain other persons, firms, corporations, as complainants, instituted a proceeding before said Commission known as Docket No. [46] 11,532, which said proceeding was duly heard by said Commission in said Docket No. 11,532, said complainants attacked as unjust and unreasonable the rates on sugar, in carloads, from points in California to Phoenix, Arizona. After due hearing and investigation of said complaint, said Commission made and rendered its opinion and order, dated June 22, 1921,

and reported in Volume 62 of the official reports of said Commission, at pages 412, and following finding that the rates on sugar, in carloads, from points in California to Phoenix, Arizona, would for the future be unreasonable to the extent that they might exceed 96½ cents per 100 pounds, and ordering and directing that said rates be reduced for the future, until the further order of the Commission, to a figure not exceeding said rate of 96½ cents per 100 pounds; and that thereafter, these defendants, together with other common carriers engaged in interstate commerce, duly and regularly filed and published tariffs effective September 17, 1921, naming a rate of 96 cents per 100 pounds, or one-half cent less than the maximum rate prescribed and authorized by said Commission; that said rate of 96 cents per 100 pounds was named in tariffs duly and regularly published and filed, with the Interstate Commerce Commission in accordance with the law.

That said rate of 96 cents per 100 pounds remained in effect until on or about July 1st, 1922, upon which date, in accordance with the recommendations made in a report of said Interstate Commerce Commission in a proceedings known as Docket No. 13,293, Reduced Rates, 1922, reported in Volume 68 of the official reports of the Interstate Commerce Commission beginning at page 676, said rate was again voluntarily reduced to 86½ cents per 100 pounds; that said last mentioned rate of 86½ cents per 100 pounds was named in tariffs of said defendants [47] and other carriers engaged in interstate commerce, duly and regularly

filed with the Interstate Commerce Commission in accordance with law.

That said last mentioned rate of 86½ cents per 100 pounds remained in effect until or about the 10th day of January, 1924; on which date said rate of 86½ cents per 100 pounds was again voluntarily reduced to 84 cents per 100 pounds; that the said last mentioned rate was duly and regularly established by these defendants, and by other common carriers engaged in interstate commerce, and was named in tariffs duly and regularly published and filed with the Interstate Commerce Commission in accordance with law.

That said last mentioned rate of 84 cents per 100 pounds remained in effect until February 25, 1925; that upon said last mentioned date said rate of 84 cents per 100 pounds was reduced to 71 cents per 100 pounds, pursuant to and in compliance with the findings and order of said Commission in a proceeding known as Docket No. 14,449, reported in Volume No. 95 of the official reports of said Commission, at pages 244 and following, in which the Traffic Bureau of the Phoenix Chamber of Commerce and certain corporations were complainants, and in which said proceeding said complainants alleged that the rates on sugar from points in California to Phoenix, Arizona, were and in the future would be unjust and unreasonable. In said last mentioned proceeding, Docket No. 14,449, said Commission found and decided that said rates from all California points to Phoenix had been unreasonable in the past to the extent that they exceeded 79 cents

per 100 pounds prior to July 1, 1922, and 71 cents per 100 pounds subsequent to that date, and undertook to award reparation on shipments made by the complainants in said proceeding to the extent that the charges collected thereon exceeded those which [48] would have accrued at said rates declared to have been reasonable; and further required the defendants in said proceeding, including these defendants, and certain other common carriers by rail in interstate commerce, to establish and maintain for the future rates not exceeding 71 cents per 100 pounds from all points in California to Phoenix, Arizona, that said last mentioned rate of 71 cents per 100 pounds was duly established, in compliance with said order, on February 25, 1925, as above set forth.

That thereafter said Interstate Commerce Commission reopened said proceeding, Docket No. 14,449, in so far as its orders therein purported to award reparation, and consolidated the same with a subsequent proceeding brought by the Traffic Bureau of the Phoenix Chamber of Commerce, and certain other persons, firms and corporations, as complainants, known as Docket No. 16,742; which said last mentioned proceeding is referred to at length in the complaint of the plaintiff herein, and particularly in paragraphs V and VI thereof; said proceeding resulted in the purported order upon which the complaint herein is based.

IX.

Defendants allege and show that said order of said Commission, dated the 11th day of March, 1929,

and purporting to order and direct these defendants to pay reparation to plaintiff upon said shipments set forth and referred to in Exhibit "A" annexed to said complaint, is null and void and of no effect, in that said Commission was and is without lawful jurisdiction and authority to make said order, for the following reasons, to wit:

(1) Said order purports to be issued pursuant to authority and jurisdiction conferred upon said Commission by the Interstate Commerce Act; but said Act does not vest said Commission with jurisdiction and authority to award reparation [49] with respect to charges collected upon the basis of rates which said Commission has theretofore specifically prescribed or approved as reasonable and just for the future by a continuing order or with respect to charges collected upon the basis of rates which are less in amount than rates so prescribed and/or approved as just and reasonable.

(2) If said Act is so construed as to vest such jurisdiction and authority in said Commission, it is to that extent unconstitutional, and any and all orders made in pursuance of said purported jurisdiction are likewise unconstitutional and void, because contrary to and forbidden by the 5th Amendment to the Constitution of the United States, and particularly those portions thereof which guarantee that no person shall be deprived of his property without due process of law, in that said order purports to condemn as unlawful and to award damages with respect to act which, at the time of their performance, were lawful, and expressly sanctioned

by previous formal continuing orders of said Commission.

(3) Said order is based upon a mistake of law, in that the Commission has erroneously assumed jurisdiction which it does not possess.

(4) Said order is arbitrary and unjust, and contrary to the evidence, in that it purports to award damages for the collection of lawful tariff rates which were admittedly prescribed and established as just and reasonable by the Commission itself, or which were materially lower than the maximum reasonable rates so authorized and approved.

(5) Said order proceeds from the exercise of authority by the Commission in such an unreasonable, arbitrary and capricious manner as to cause it to be invalid, amounting to a denial of due process of law as guaranteed by the aforesaid [50] 5th amendment.

(6) Said order constitutes a collateral retroactive reversal of orders heretofore duly and regularly entered and made by said Commission, pursuant to its lawful jurisdiction and authority, which said collateral retroactive reversal is forbidden by, and contrary to, the provisions of the Interstate Commerce Act.

WHEREFORE, defendants allege and show that the Interstate Commerce Commission was and is without jurisdiction or statutory authority to order these defendants, or either of them, to pay reparation on account of the rates, or either of them, so charged and collected; and that said alleged order of said Interstate Commerce Commission purport-

ing to authorize and direct said defendants to pay reparation to the plaintiff on account of said rates, or either of them, is void, and of no effect; and these defendants pray that the complaint be dismissed, and that they be allowed their costs incurred herein.

BAKER & WHITNEY,
Attorneys for Defendants.

JAMES E. LYONS,
A. BURTON MASON,
Of Counsel.

Received copy of the within this 25th day of November, 1929.

ELLIOTT & SNELL,
Attorneys for Plaintiffs.

Filed Nov. 25, 1929. [51]

[Title of Court and Cause—No. L.-695—Phoenix.]

STIPULATION FOR CONSOLIDATION OF CAUSES.

Comes now the above-named plaintiff and defendants by their respective attorneys and waive a jury in the above-entitled cause.

IT IS FURTHER HEREBY STIPULATED AND AGREED that the above-entitled cause, and cause No. L.-696—Phoenix, entitled Arizona Grocery Company, a Corporation, Plaintiff, vs. Southern Pacific Company, a Corporation, and Santa Maria Valley Railroad Company, a Corporation, Defendants, may be tried together.

Dated this 7th day of January, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiff.
BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants.

Filed Jan. 8, 1930. [91]

[Title of Court and Cause—No. L.-696—Phoenix.]

STIPULATION FOR CONSOLIDATION OF CAUSES.

Comes now the above-named plaintiff and defendants by their respectve attorneys and waive a jury in the above-entitled cause.

IT IS FURTHER HEREBY STIPULATED AND AGREED that the above-entitled cause, and cause No. L.-695, entitled Arizona Grocery Company, a Corporation, Plaintiff, vs. Atchison, Topeka & Santa Fe Railway Company, a Corporation, Bay Transport Company, a Corporation, and Southern Pacific Company, a Corporation, Defendants, may be tried together.

Dated this 7th day of January, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiff.
BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants.

Filed Jan. 8, 1930. [92]

[Title of Court and Cause—No. L.-695—Phoenix.]

REQUEST FOR SPECIAL FINDINGS.

Now comes the defendants above named by their counsel and request the Court to make, enter, and file, in the above-entitled action special findings of fact prior to rendering judgment.

Dated, this 7th day of January, 1930.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants.

Filed Jan. 8, 1930. [93]

[Title of Court and Cause—No. L.-696—Phoenix.]

REQUEST FOR SPECIAL FINDINGS.

Now comes the defendants above named by their counsel and request the Court to make, enter, and file, in the above-entitled action special findings of fact prior to rendering judgment.

Dated, this 7th day of January, 1930.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants.

Filed Jan. 8, 1930. [94]

[Title of Court and Cause—Nos. L.-695, L.-696—Phoenix.]

STIPULATION FOR PROCEDURE.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled actions, and by and between their respective attorneys and counsel that:

1. The foregoing actions shall be submitted to the trial court for decision upon the record in said actions, as made by the filing of the agreed statement of facts executed by the parties under date of January 8, 1930, and by the introduction in evidence of the order of the Interstate Commerce Commission in I. C. C. Docket No. 16,742, under date of March 11, 1929 (a copy of said order being annexed to each of the complaints herein and marked Exhibit "C"), and upon argument of counsel upon the record as so made.

2. In the event that said court shall decide that upon the record as so made, judgments in said causes should be entered in favor of the defendants, plaintiff shall have [95] the right, within ten days after notice of such decision, to serve and file a motion for a further hearing of said causes, for the purpose of offering testimony on behalf of plaintiff respecting the reasonableness, at the times of their assessment, of the rates assessed and collected upon plaintiff's shipments referred to in detail upon the statements annexed to the complaints in said causes and marked Exhibit "A."

3. Defendants will not oppose such motion for further hearing, but shall have the right to make objection to any and all of such further testimony upon any and all grounds which may seem proper to them.

4. In the event that the court shall decide, upon the record as made, that judgments should be entered for the plaintiffs in said causes, either party shall have the right upon ten days' notice, and as soon thereafter as the issue may be heard, to introduce testimony respecting the amount of the attorneys' fees to be allowed by the court to plaintiffs' attorney and counsel.

ELLIOTT & SNELL,
Attorneys for Plaintiff.
BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants.

Filed Jan. 8, 1930. [96]

[Title of Court and Cause—No. L.-695—Phoenix.]

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Now comes the plaintiff, above mentioned, by its attorneys, Elliott and Snell, and hereby requests the Court to make the following findings of fact and conclusions of law in this action.

Dated this 27th day of June, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiff. [103]

[Title of Court and Cause—No. L.-695—Phoenix.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause coming on for trial at the regular term of said court, and on the 8th day of January, 1930, and having been tried by the Court, a jury trial having been legally waived by the respective parties hereto, plaintiff appearing by its attorneys, [104] Elliott and Snell, and the defendants appearing by their attorneys, Baker and Whitney, Chalmers, Fennemore and Nairn, and R. W. Camp, James E. Lyon, and James Burton Mason, of Counsel; plaintiff and defendants by and through their respective attorneys having filed with the Court a written agreed statement of certain facts and the respective parties having offered both oral and documentory evidence in support of their respective pleadings herein, and the Court, after hearing the evidence, the argument of counsel and having considered the agreed statement of facts, and being fully advised in the premises does hereby make and file the following as its findings of fact and conclusions of law, constituting the decision of the court in this action:

FINDINGS OF FACT.

1.

That the plaintiff is and was at all times mentioned in plaintiff's complaint a corporation or-

ganized under the laws of the State of Arizona and qualified to do business in said State [105] of Arizona.

2.

That at all times mentioned in plaintiff's complaint, the defendants, Atchison, Topeka and Santa Fe Railroad and the Southern Pacific Company were and now are railroad corporations engaged in the operation of railroads and railroad lines, and that the defendant, Bay Transport*ation* Company was and now is a water transportation line, and that all of said defendants were and now are engaged in the transportation of freight and Interstate Commerce, and that the Bay Transport*ation* Company and the Southern Pacific Company were and now are connecting carriers with the defendant, Atchison, Topeka and Santa Fe Railroad Company, and that there was and is between said defendants an agreement for a joint line and arrangements for a continuous carriage of interstate commerce over their respective lines.

3.

That between the 6th day of February, 1923, and the 10th day of February, 1925, there [106] was shipped by the plaintiff, Arizona Grocery Company, to Phoenix, Arizona, over the lines of the said defendants and entered Phoenix, Arizona, over the lines of the Atchison, Topeka & Santa Fe Railroad Company, 50 carloads of sugar.

That the said shipments originated at San Francisco, California, Crockett, California, and

Spreckels, California, all as shown on Exhibit "A," attached to plaintiff's complaint.

4.

That the defendant, Atchison, Topeka & Santa Fe Railroad Company charged the plaintiff, Arizona Grocery Company and the Arizona Grocery Company was compelled to and did pay the said Atchison, Topeka & Santa Fe Railroad Company upon all of said shipments from said points in California from the 6th day of February, 1923, to the 10th day of February, 1925, inclusive, the following freight charges, to wit:

From San Francisco, California, between the dates of February 24, 1923, to the 7th day of January, 1924, inclusive, 86½¢ per hundred pounds, and from the 11th day of January, 1924, [107] to the 10th day of February, 1925, 84 cents per hundred pounds.

From Crockett, California, between the dates of February 16, 1923, to the 4th day of January, 1924, 86½¢ per hundred pounds, and from the 3rd day of February, 1924, to the 19th day of August, 1924, 84 cents per hundred pounds.

From Spreckels, California, on the one shipment from said point, as shown on Exhibit "A" attached hereto, and received by the plaintiff on the 28th day of February, 1924, 84 cents per building pounds.

That all of said shipments were made on through bills of lading from said points of origin to the said point of destination, to wit: Phoenix, Arizona.

And that said freight charges as above set forth, per hundred pounds, were and are unreasonable to the plaintiff and in violation of the interstate Commerce Act of February 4, 1887, and the acts of Congress amendatory thereto.

That the just and reasonable freight rate which should have been charged on all of said shipments from said points of origin in California to [108] said point of destination in Arizona after the 1st day of July, 1922, and up to *an* including the 10th day of February, 1925, was 75 cents per hundred pounds.

5.

That the plaintiff prior to the commencement of this action filed its petition and complaint with and before the Interstate Commerce Commission of the United States, alleging that the rates and charges on the above-mentioned shipments were unjust and unreasonable as to the plaintiff, and that thereafter the defendants filed their answer with and before the Interstate Commerce Commission. That said matter was docketed before the Interstate Commerce Commission under docket No. 16,742.

6.

That the Interstate Commerce Commission issued and filed its findings of fact in said matter on the 12th day of March, 1928.

That said Commission found that the said rate of 86½ cents and 84 cents per hundred [109] pounds as above mentioned on said shipments were unreasonable as to the plaintiff to the extent that they exceeded a rate and charge of 73 cents per

hundred pounds on and after July 1, 1922, up to and including the 10th day of February, 1925.

And that said report and findings found that the plaintiff was entitled to reparations on all of said shipments and to interest thereon.

That the plaintiff did duly comply with all of the requirements of the Interstate Commerce Commission as to the proof necessary for the amount of said reparations.

7.

And on the 11th day of March, 1929, the Interstate Commerce Commission duly made and published its order directing and requiring the defendants herein to pay to the plaintiff the following sums, to wit:

Atchison, Topeka and Santa Fe R. R. Co. . . $2203.55
Atchison, Topeka and Santa Fe R. R. Co. and Bay Transport Company 1521.02
Atchison, Topeka and Santa Fe R. R. Co. and Southern Pacific Company 297.04

[110]

together with interest thereon at the rate of 6% per annum from the respective dates of payment of the charges by the defendants; said sums to be paid on or before the 26th day of April, 1929; said sums being reparation on account of the unreasonable rates charged for the transportation of said carload shipments of sugar.

8.

That the defendants failed and refused to comply with said order and to pay said reparation or any

part thereof, though request and demand was properly made by the plaintiff for the payment of same.

9.

That by reason of said unreasonable rates and charges and payment thereof by the plaintiff and by reason of the refusal of the defendants to pay said reparation so awarded by the Interstate Commerce Commission, plaintiff is damaged in the total sum of $3,751.61, together with interest thereon at the rate of 6% [111] per annum from the respective dates of payment.

10.

That the plaintiff was required to employ attorneys at law to prosecute the present action in order to effect collection of said reparation and that 20% of the total amount due including interest and principal is reasonable as attorneys' fees. [112]

CONCLUSIONS OF LAW.

Based upon the foregoing findings of fact, the Court finds as conclusions of law, as follows:

1.

That the order of the Interstate Commerce Commission, dated March 11, 1929, and made and entered in that certain proceeding before said Commission entitled Traffic Bureau of Phoenix Chamber of Commerce et al. vs. A. T. & S. F. Railroad Company et al., Docket No. 16742, which order required said defendants to pay to the plaintiff herein certain sums of money, as set forth in said order and in plaintiff's complaint, was and is a legal, valid, and binding order and was made and entered

by said Interstate Commerce Commission in said cause and was within the power and jurisdiction conferred upon said Interstate Commerce Commission by law, and that in the making of said order the said Interstate Commerce Commission acted [113] within its jurisdiction and power.

2.

That the rates of 86½ cents and 84 cents per hundred pounds charged the plaintiff by the defendants between the 6th day of February, 1923, and the 10th day of February, 1925, on shipments of fifty carloads of sugar originating at San Francisco, Crockett, and Spreckels in the State of California, as shown on Exhibit "A," attached to plaintiff's complaint, were, as found by the Interstate Commerce Commission in said proceeding unreasonable to the extent that they exceeded a rate and charge of 73 cents per hundred pounds after July 1, 1922, up to and including the 10th day of February, 1925, and that the reasonable rate which should have been charged the plaintiff on account of said shipments over defendants' lines was 73 cents per hundred pounds between said dates.

3.

That by reason of said unreasonable charges the plaintiff has been damaged and the defendants, and each of them, became and are jointly and severally indebted to the plaintiff in the sum of $3,751.61, principal, together with interest at the rate of six per cent per annum from [114] the respective dates of payment of the charges as shown on Exhibit "A" attached to plaintiff's complaint, amount-

ing to the sum of $1,444.14, and attorneys' fees of 20% of the total amount of said indebtedness, including principal and interest, amounting to the sum of $1,039.19, together with the other lawful costs incurred by plaintiff in this action, and that plaintiff is entitled to judgment therefor.

Done and dated this —— day of ——, 1930.

_____,

Judge.

The receipt of a copy of the within instrument acknowledged this 27 day of June, 1930.

BAKER & WHITNEY and
CHALMERS FENNEMORE & NAIRN,
Attorneys for Plaintiff.

Filed Jun. 27, 1930. [115]

[Title of Court and Cause—No. L.-696—Phoenix.]

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Now comes the plaintiff, above mentioned, by its attorneys, Elliott and Snell, and hereby requests the Court to make the following findings of fact and conclusions of law in this action.

Dated this 27th day of June, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiff. [116]

[Title of Court and Cause—No. L.-696—Phoenix.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause coming on for trial at the regular term of said court, and on the 8th day of June, 1930, and having been tried by the Court, a jury trial having been legally waived by the respective parties hereto, plaintiff appearing by its attorneys, Elliott and Snell, and the defendants appearing by their attorneys, Baker, and Whitney, Chalmers, Fennemore and Nairn, and E. W. Camp, James E. Lyon, and James Burton Mason, of counsel; plaintiff and defendants by and through their respective attorneys having filed with the Court a written agreed statement of certain facts and the respective parties having offered both oral and documentory [117] evidence in support of their respective pleadings herein, and the Court, after hearing the evidence, the argument of counsel and having considered the agreed statement of facts, and being fully advised in the premises does hereby make and file the following as its findings of fact and conclusions of law, constituting the decision of the Court in this action:

FINDINGS OF FACT.

1.

That the plaintiff is and was at all times mentioned in plaintiff's complaint a corporation organized under the laws of the State of Arizona

and qualified to do business in said State of Arizona.

2.

That at all times mentioned in plaintiff's complaint, the defendants, Southern Pacific Company and Santa Maria Valley Railroad Company, were and now are railroad corporations engaged in the operation [118] of railroad lines for the transportation of freight and Interstate Commerce, and the Santa Maria Valley Railroad Company is and was at all times mentioned in plaintiff's complaint a connecting carrier with the said defendants, Southern Pacific Company, and between which there was an agreement for a joint line and arrangements for a continuous carriage of interstate commerce shipments over their respective lines.

3.

That between the 21st day of Februray, 1923, and the 5th day of February, 1925, inclusive, there was shipped by the plaintiff, Arizona Grocery Company to Phoenix, Arizona, over the lines of the said defendants and entered Phoenix, Arizona, over the lines of the Southern Pacific Company thirty-two carloads of sugar.

That the shipments originated at San Francisco, California, Crockett, California, Oxnard, California, and Betteravia, California, all as shown on Exhibit "A" attached to plaintiff's complaint.

4.

That the defendant, Southern Pacific [119] Company, charged the plaintiff, Arizona Grocery

Company and the Arizona Grocery Company was compelled to and did pay the said Southern Pacific Company upon all of said shipments from said points in California, from the 21st day of February, 1923, to the 5th day of February, 1925, inclusive, the following freight charges, to wit:

From San Francisco, California, Oxnard, California, Crockett, California, Betteravia, California, between the dates of February 21, 1923, to and including the 16th of November, 1923, 86½ cents per hundred pounds.

And from the 5th day of February, 1924, to the 4th day of February, 1925, inclusive, 84 *cent* per hundred pounds.

That all of said shipments were made on through bills of lading from said points of origin to said point of destination, to wit, Phoenix.

And that said freight charges as above set forth per hundred pounds were and are unreasonable to the plaintiff and in violation of the Interstate Commerce Act of February 4, 1885, and the Acts of Congress amendatory thereto.

That the just and reasonable freight rate which should have been charged on all of said shipments from Crockett, California, and San Francisco, [120] California, to said point of destination, to wit; Phoenix, Arizona, after the date of July 1, 1922, and up to and including the 5th day of February, 1925, was 73 cents per hundred pounds; and on all of said shipments from Oxnard and Betteravia, California, to said point of destination, to wit; Phoenix, Arizona, after the first day of July, 1922,

and up to and including the 5th day of February, 1925, was 71 cents per hundred pounds.

5.

That the plaintiff prior to the commencement of this action filed its petition and complaint with and before the Interstate Commerce Commission of the United States, alleging that the rates and charges on the above-mentioned shipments were unjust and unreasonable as to the plaintiff, and that thereafter the defendants filed their answer with and before the Interstate Commerce Commission. That said matter was docketed before the Interstate Commerce Commission under Docket No. 16,742.

6.

That the Interstate Commerce Commission issued and filed its findings of fact in said matter [121] on the 12th day of March, 1928.

That said Commission found that the said rates of 86½ cents and 84 cents per hundred pounds as above mentioned on said shipments from said points of origin in California to said points of destination in Arizona, were unreasonable as to the plaintiff to the extent that they exceeded a rate and charge of 73 cents per hundred pounds on or after July 1, 1922, up to and including the 5th day of February, 1925, from Crockett, California and San Francisco, California.

And 71 cents per hundred pounds from Oxnard, California, and Betteravia, California, on and after July 1, 1922, up to and including the 5th day of February, 1925.

And that said report and findings found that the plaintiff was entitled to reparations on all of said shipments and to interest thereon.

That the plaintiff did duly comply with all of the requirements of the Interstate Commerce Commission as to the proof necessary for the amount of said reparations.

7.

And on the 11th day of March, 1929, the [122] Interstate Commerce Commission duly made and published its order directing and requiring the defendants herein to pay to the plaintiff the following sums, to wit:

Southern Pacific Railroad $2104.58
Southern Pacific Railroad & Santa Maria Valley Railroad Company 359.75

together with interest thereon at the rate of 6% per annum from the respective dates of payment of the charges by the defendants; said sums to be paid on or before the 26th day of April, 1929; said sums being reparation on account of the unreasonable rates charged for the transportation of said carload shipments of sugar.

8.

That the defendants failed and refused to comply with said order and to pay said reparation or any part thereof, though request and demand was properly made by the plaintiff for the payment of same.

9.

That by reason of said unreasonable rates and charges and payments thereof by the plaintiff and by reason of the refusal of the [123] defendants to pay said reparation so awarded by the Interstate Commerce Commission, plaintiff is damaged in the total sum of $3,464.33, together with interest thereon at the rate of 6% per annum from the respective dates of payment.

10.

That the plaintiff was required to employ attorneys at law to prosecute the present action in order to effect collection of said reparation and that 20% of the total amount due including interest and principal is reasonable as attorneys' fees. [124]

CONCLUSIONS OF LAW.

Based upon the foregoing findings of fact, the Court finds as conclusions of law as follows:

1.

That the order of the Interstate Commerce Commission, dated March 11, 1929, and made and entered in that certain proceeding before said Commission entitled Traffic Bureau of Phoenix Chamber of Commerce et al. vs. Atchison, Topeka and Santa Fe Railroad Company et al., Docket No. 16,742, which order required said defendants to pay to the plaintiff herein certain sums of money, as set forth in said order and in plaintiff's complaint, was and is a legal, valid and binding order and was made and entered by said Interstate Commerce

Commission in said cause and was within the power and jurisdiction conferred upon said Interstate Commerce Commission by law, and that in the making [125] of said order the said Interstate Commerce Commission acted within its jurisdiction and power.

2.

That the rates of 86½ and 84 cents per hundred pounds charged the plaintiff by the defendants between the 21st day of February, 1923, and the 5th day of February, 1925, on shipments of thirty-two carloads of sugar originating at San Francisco, California, Crockett, California, Oxnard, California and Betteravia, California, as shown on Exhibit "A," attached to plaintiff's complaint were as found by the Interstate Commerce Commission in said proceeding known as docket No. 16,742, unreasonable to the extent that they exceeded a rate and charge of 73 cents per hundred pounds on all said shipments from Crockett, California, and San Francisco, California, to Phoenix, Arizona, after the date of July 1, 1922, and up to and including the 5th day of February, 1925; and 71 cents per hundred pounds on all of said shipments from Oxnard, California, and Betteravia, California, to Phoenix, Arizona, after the [126] first day of July, 1922, and up to and including the 5th day of February, 1925.

And that the reasonable rate which should have been charged the plaintiff on account of said shipments over defendants' lines during said dates was 73 cents per hundred pounds on all said shipments from Crockett, California, and San Francisco, Cali-

fornia, to Phoenix, Arizona, and 71 cents per hundred pounds on all shipments between said dates from Oxnard, California, and Betteravia, California.

3.

That by reason of said overcharge, the plaintiff has been damaged and the defendants and each of them, became and are jointly and severally indebted to the plaintiff in the sum of $2,464.33, together with interest at the rate of 6% per annum from the respective dates of payment of the charges as shown on Exhibit "A," attached to plaintiff's complaint, amounting to the sum of $933.91, and attorneys' fees of 20% of the total amount of said indebtedness, including principal and interest, amounting to the sum of $675.60, together with the other costs incurred by plaintiff in this [127] action and the plaintiff is entitled to judgment therefor.

Done and dated this —— day of ——, 1930.

_____,
Judge.

The receipt of a copy of the within instrument acknowledged this 27 day of June, 1930.

BAKER & WHITNEY and
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Plaintiff.

Filed Jun. 27, 1930. [128]

[Title of Court and Cause—Nos. L.-695, L.-696—Phoenix.]

SPECIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUESTED BY DEFENDANTS.

The defendants, considering the facts hereinafter set forth to have been proved, and deeming them essential, request the Court to make findings of fact and conclusions of law as follows:

A. FINDINGS OF FACT.

1. These causes were, by written agreement of the parties, duly filed, consolidated for purposes of trial and decision, and were jointly tried upon a consolidated record by the Court on the 8th day of January, 1930, a trial by jury having been duly waived by written stipulation of the parties.

2. Plaintiff and defendants, by and through their respective attorneys and counsel, filed with the Court a written agreed statement of facts; and plaintiff offered certain documentary testimony in support of its complaints; and, pursuant to stipulation, the parties subsequently, on the 23d day of June, [129] 1930, offered certain oral testimony with respect to the matter of the fees to be allowed to plaintiff's attorneys and counsel; and the Court was duly requested in writing to make, enter, and file special findings of fact in said causes, prior to rendering judgment.

3. Plaintiff now is, and at all times herein mentioned was, a corporation organized and existing

under the laws of the State of Arizona, and qualified to do business in said State.

4. Defendants Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company, and Santa Maria Valley Railroad Company now are, and at all times herein mentioned have been corporations duly organized and existing as such, and engaged in the operation of lines of railroads, pursuant to the authority of law, as common carriers for hire, and in the transportation of property by means of their lines of railroad and in conjunction with their connecting carriers, in interstate commerce from points in the State of California to points in the State of Arizona.

Defendant Bay Transport Company now is, and at all times herein mentioned was, a corporation duly organized and existing as such, and engaged in the transportation of freight by water, in interstate commerce, as a connection of the railroad corporation hereinbefore referred to.

5. Heretofore, and at various dates between the 6th day of February, 1923, and the 10th day of February, 1925, said plaintiff shipped or caused to be shipped from San Francisco, Crockett, Oxnard, Betteravia, and Spreckels, California, to Phoenix, Arizona, over the lines of said defendants, eighty-two carload shipments of sugar; that said shipments are severally set forth upon the following list, which correctly shows in detail the dates upon which said shipment were made, the dates upon which the charges for the transportation thereof were [130] collected, the car initials and numbers of the cars in which the same were loaded and trans-

ported, the several points of origin thereof, the several weights of said shipments, the rates thereon assessed, and the charges thereon collected, the rates subsequently found by the Interstate Commerce Commission to have been reasonable, and the amounts which would have accrued under said last-mentioned rates (said last-mentioned rates and amounts being shown under the columns headed "as should be"), and the amount of reparation claimed by the plaintiff and allowed by said Commission with respect to each of said shipments: [131]

PLAINTIFF'S EXHIBIT "C."

The following is a list of shipments involved in Cause No. L.-695.

CLAIM No. 806-2.

Claim No. 806-2 of the Arizona Grocery Company, Under the Decision of the Interstate Commerce Commission in Docket No. 16742—on Suger, Carloads—Destination, Phoenix, Arizona.

Date Shipt.	Date of Collection	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
				Routed via A. T. & S. F. Ry. Co.						
1923	1923									
2-24	2-26	AT	26966	San. FR.	60450	86½	522.89	73	441.29	81.60
7-25	7-31	AT	36212	"	61152	86½	528.96	73	446.41	82.55
8-30	9- 6	AT	116775	"	60758	86½	525.56	73	443.53	82.03
10- 4	10- 9	AT	34714	"	60819	86½	526.08	73	443.98	82.10
11-16	11-21	DLW	43738	"	61093	86½	528.45	73	445.98	82.47
11-23	11-30	AT	63696	"	68450	86½	592.09	73	499.69	92.40
12- 1	12- 7	AT	116509	"	61115	86½	528.64	73	446.14	82.50

Date Shipped	Date Collected	Initials	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	Should be Rate	Should be Amt.	Reparation
1924.	1924.									
1- 2	1- 7	AT	116055	San FR.	60725	86½	525.27	73	443.29	81.98
1-11	1-17	AT	118045	"	61316	84	515.05	73	447.61	67.44
1-16	1-21	AT	39566	"	83955	84	705.22	73	612.87	92.35
1-18	1-24	AT	46224	"	60619	84	509.20	73	442.52	66.68
1-25	1-30	AT	27562	"	60715	84	510.01	73	443.22	66.79
2- 4	2- 8	AT	32233	"	60770	84	510.47	73	443.62	66.85
2-20	2-26	AT	116304	"	60832	84	510.99	73	444.07	66.92
3-20	3-24	AT	118181	"	61224	84	514.28	73	448.94	67.34
5-17	5-22	AT	116599	"	61009	84	512.48	73	445.37	67.11
6- 3	6- 9	AT	117726	"	61195	84	514.08	73	446.72	67.36
7- 7	7-14	AT	116356	"	60732	84	510.15	73	443.34	66.81
7-29	8- 4	AT	46535	"	61065	84	512.95	73	445.77	67.18
8-23	8-28	AT	38975	"	60959	84	512.06	73	445.00	87.06
9- 4	9- 9	AT	35968	"	60770	84	510.47	73	443.62	66.85
9-24	9-29	AT	117847	"	60915	84	511.69	73	444.68	67.01
1923.	1923.									
2- 6	2-13	AT	33480	"	60625	86½	524.41	73	442.56	81.85

[132]

Date Shipt.	Date of Collection	Car Int.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
				Routed via A. T. & S. F. Ry. Co.						
1924.	1924.									
9-27	10-3	AT	116476	San. Fran.	60713	84	509.99	73	443.20	66.79
11-21	11-28	AT	65098	"	60871	84	511.32	73	444.36	66.96
12-27	12-31	AT	63603	"	60812	84	510.82	73	443.93	66.89
	1925.									
12-29	1- 3	AT	130017	"	80905	84	679.60	73	590.61	88.99
1925.	1925.									
1-22	1-25	AT	36086	"	61222	84	514.26	73	446.92	67.34
1-30	2- 4	AT	65112	"	60512	84	508.30	73	441.74	66.56
2- 3	2- 6	AT	43806	"	60700	84	509.88	73	443.11	66.77
2- 5	2-10	AT	47163	"	60737	84	510.19	73	443.38	66.81

Shipped	Collection	Int.	No.	(Calif.)	Weight	Rate	Amt.	Rate	Amt.	Depreciation
1923.	1923.		Routed via B. T. Co., San Francisco AT. SF. Ry. Co.							
2-16	2-23	NYC	246308	Crockett	60456	86½	522.90	73	441.33	81.57
2-28	3- 6	AT	26875	"	60450	86½	522.90	73	441.29	81.61
5- 9	5-15	AT	27369	"	60450	86½	522.90	73	441.29	81.61
6- 1	6- 7	AT	32244	"	61138	86½	528.84	73	446.31	82.53
6-14	6-19	AT	34050	"	60751	86½	525.50	73	443.48	88.02
7-31	8- 7	AT	27200	"	60717	86½	525.21	73	443.23	81.98
8- 9	8-15	AT	49701	"	60717	86½	525.21	73	443.23	81.98
8-22	8-29	AT	48544	"	83093	86½	718.75	73	606.58	112.17
9-28	10- 4	AT	38360	"	60690	86½	524.79	73	443.04	81.93
12-14	12-19	NOTM	2480	"	60781	86½	525.75	73	443.70	82.05
1924.	1924.									
2-20	2-26	AT	33637	"	60882	84	511.41	73	444.44	66.97
3- 3	3- 7	AT	33848	"	60986	84	512.29	73	445.20	67.09
5- 1	5- 6	AT	35949	"	60966	84	512.12	73	445.05	67.07
6-28	7- 2	AT	63056	"	60690	84	509.80	73	443.04	66.76
8-14	8-19	AT	31198	"	60809	84	510.80	73	443.91	66.89

Date Shipt.	Date of Collection	Car Int.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
				Routed via S. P. Bay Point A. T. & S. F. Ry. Co.						
1923.	1923.									
4–30	5– 7	SP	35299	Crockett	60737	86½	525.38	73	443.38	82.00
	1924.									
12–29	1– 4	DLW	38646	"	60723	86½	525.25	73	443.28	81.97
1924.	1924.									
2– 3	2–11	SSW	25848	"	60692	84	509.81	73	443.05	66.76
				Routed via S. P. Los Angeles, A. T. & S. F. Ry.						
2–20	2–28	CM&StP.	92364	Spreckles	60450	84	507.78	73	441.29	66.49
				Totals			26483.38		22731.59	3751.79

With Accrued Interest.

THE ARIZONA GROCERY COMPANY, Claimants.

By ROLAND JOHNSTON, Attorney,

Room 14, Arizona Fire Building—Phoenix, Arizona, April 16, 1928.

Pltf.'s Exhibit *No.* "C." Admitted and Filed January 8, 1930. C. R. McFall, Clerk. By J. Leo Baker, Chief Deputy Clerk. Case No. L.—Phx. & L.-696—Phx. Arizona Gro. Co. vs. So. Pac. Co. et al. [124]

PLAINTIFF'S EXHIBIT "B."

The following is a list of shipments involved in Cause No. L.-696:

EXHIBIT "B."

CLAIM No. 805-1.

Claim No. 805-1 of the Arizona Grocery Company, Under the Decision of the Interstate Commerce Commission in Docket No. 16742—on Sugar, Carloads—Destination, Phoenix, Arizona.

Date Shipt.	Date Chgs. Paid	Car Init.	Car No.	Origin (Calif.)	Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via Southern Pacific Ry.						
1923.	1923.									
2-22	3- 1	CM&StP	87286	Crockett	60789	86½	525.82	73	443.76	82.06
3-13	3- 2	GH&SA	50987	San. Fran.	60896	86½	526.75	73	444.54	82.21
3-20	3-28	SP	87745	"	60813	86½	526.03	73	443.93	82.10
4-25	5- 2	SP	35005	"	60788	86½	525.82	73	443.75	82.07
5-12	5-19	SP	27309	"	60838	86½	526.25	73	444.12	82.13
6-27	7-10	SP	16940	"	81023	86½	700.85	73	591.47	109.38
9-14	9-20	SP	26505	Oxnard	60450	86½	522.89	71	429.20	93.69
9-19	9-26	SP	35048	San Fran.	60838	86½	526.25	73	444.12	82.13
10-11	10-18	SP	21533	Oxnard	60450	86½	522.89	71	429.20	93.69

Date Shipt.	Date Chgs. Paid	Car Init.	Car No.	Origin (Calif.)	As Charged Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via Southern Pacific Ry.						
1924.	1924.									
2–5	2–12	CGW	29288	Oxnard	60450	84	507.78	71	429.20	78.58
3–22	3–28	SP	16776	San Fran.	60750	84	510.30	73	443.48	66.82
2–29	4– 9	SP	29047	"	60782	84	510.67	73	443.71	66.88
4–11	4–17	NYC	248647	"	60940	84	511.90	73	444.86	67.04
6–14	6–20	NYC	51840	Crockett	60651	84	509.47	73	442.75	66.72
6–24	7– 2	SP	28501	San Fran.	60964	84	512.10	73	445.04	67.06
6–25	7– 2	SP	81424	Crockett	60678	84	509.70	73	442.95	66.75
8–16	8–25	Sou.	135043	"	60657	84	509.52	73	442.80	66.72
8–28	9– 2	SP	16630	"	60733	84	510.16	73	443.35	66.81
9–18	9–24	SP	81461	"	60690	84	509.80	73	443.04	66.76
9–25	10– 1	LW	32523	"	60677	84	509.69	73	442.94	66.75
11– 5	11–14	MK&T	68173	San Fran.	61253	84	514.53	73	447.15	67.38
11–13	11–18	SP	30000	Crockett	60679	84	509.70	73	442.98	66.74
12–1	12– 8	SP	28487	"	60640	84	509.38	73	442.67	66.71

Date Shipt.	Date Chgs. Paid	Car Init.	Car No.	Origin (Calif.)	Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via Southern Pacific Railway.						
1924.	1924.									
12- 3	12- 9	SP	30791	San Fran.	60669	84	509.62	73	442.88	66.74
12-15	12-22	SP	21267	Crockett	90707	84	761.94	73	662.16	99.78
1925.	1925.									
1- 7	1-13	SP	29825	San Fran.	60983	84	512.25	73	445.18	67.07
1-14	1-19	SP	27862	"	60890	84	511.48	73	444.50	66.98
1-29	2- 4	SSW	27113	Crockett	60676	84	509.68	73	442.93	66.75
1923.	1923.			Routed via S. M. V. R. R. Co.—S. P. Co.						
9-16	9-20	SP	16564	Betteravia	60450	86½	522.89	71	429.50	93.69
9-28	10- 5	LW	32484	"	60450	86½	522.89	71	429.20	93.69
10- 9	10-16	SP	87173	"	60450	86½	522.99	71	429.20	93.79

vs. Arizona Grocery Co.

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Date Shipt.	Date Chgs. Paid	Car Init.	Car No.	Origin (Calif.)	Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via Southern Pacific Ry.						
1924 6–16	1924. 6–23	GH	50670	Betteravia	60450	84	507.78	71	429.20	78.58
				Totals			16,929.67		14,465.44	2464.23

With Accrued Interest.

ARIZONA GROCERY COMPANY, Claimant.
By ROLAND JOHNSTON, Attorney,
Room 14—Arizona Fire Building,
Phoenix, Arizona, April 16, 1928.

Pltf.'s Exhibit *No.* "B." Admitted and Filed January 8, 1930. C. R. McFall, Clerk. By J. Lee Baker, Chief Deputy Clerk. Case No. L.-695—Phx. & L.-696—Phx. Arizona Gro. Co. vs. So. Pac. Co. et al. [136]

6. On the 22d day of June, 1921, in a proceeding before the Interstate Commerce Commission known as Docket 11,532, entitled "Traffic Bureau, Phoenix Chamber of Commerce et al., Complainants, vs. Director General et al., Defendants" (to which proceeding Arizona Grocery Company, a copartnership, predecessor in interest of the plaintiff herein, was a party complainant) upon a complaint alleging that the rates on sugar in carloads from points in California (including all points in said State referred to in said list of shipments hereinbefore set forth) to Phoenix had been, were, and in the future would be unreasonable in violation of the Interstate Commerce Act, said Commission after due hearing and investigation duly made and rendered its opinion and order in said proceeding dated June 22d, 1921, which said opinion is reported in Volume 62, I. C. C. reports, at pages 412 and following. Said report and order ~~were and are as follows:~~ fixing a maximum rate of 96½ cts. per 100 lbs.** [137]

**[See p. 426 for Stipulation as to correct matter.]

No. 11532.

TRAFFIC BUREAU, CHAMBER OF COMMERCE, PHOENIX, ARIZ., et al.

v.

DIRECTOR GENERAL, AS AGENT, SOUTHERN PACIFIC COMPANY, et al.

Submitted April 12, 1921. Decided June 22, 1921.

1. Rates on sugar, in carloads, from California points to Phoenix, Arix., found unreasonable. Reasonable rate prescribed for the future.
2. Following *Phoenix Chamber of Commerce* v. *Director General,* 62 I. C. C., 368, prayer for the establishment of through routes and joint rates from San Francisco, Calif., by way of Phoenix, to points on the Southern Pacific, Maricopa, Ariz., to El Paso, Tex., denied.

Roland Johnston for complainants.

F. A. Jones for Arizona Corporation Commission, intervener.

E. W. Camp, Elmer Westlake, G. H. Baker, and *M. A. Cummings* for defendants.

REPORT OF THE COMMISSION.

Division 1, Commissioners McCHORD, AITCHISON, and LEWIS.

AITCHISON, *Commissioner:* This case was made the subject of a proposed report by the examiner. Exceptions thereto were filed by defendants.

Complainants are the Traffic Bureau, Chamber of Commerce, Phoenix, Ariz., an organization of shippers and citizens of Phoenix, Hall-Pollock Company, and Haas-Baruch & Company, corporations, an dthe Arizona Grocery Company, a partnership.

The three firms named are engaged in the grocery business at Phoenix. By complaint filed June 14, 1920, they allege that the rates charged by defendants for the transportation of sugar from points in California to Phoenix, were and are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, 3, and 4, of the interstate commerce act and section 10 of the federal control act. They ask us to prescribe just and reasonable rates for the future, to award reparation on all shipments moving subsequently to May 2, 1916, and to establish through routes and joint rates from San Francisco, Calif., by way of Phoenix, to Maricopa, Ariz., and points east thereof, on lines of the Southern Pacific Company, to and including El Paso, Tex. The Arizona Cor- (413) poration

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62 I. C. C. [138]

Commission intervened on behalf of complainants. The allegation of a fourth section violation was abandoned at the hearing. Rates are stated herein in amounts per 100 pounds.

Phoenix is the only point in Arizona common to the lines of the Atchison, Topeka & Santa Fe Railway and the Southern Pacific. It is located on the branch of the Santa Fe extending south from Ash Fork, Ariz., but is served by that carrier on traffic from California by means of a branch line known

as the Parker cut-off, which leaves the main line at Cadiz, Calif., and connects with the Ash Fork branch at Wickenburg, Ariz., Phoenix is served by the Southern Pacific through the medium of the Arizona Eastern Railroad, which it owns and with which it connects at Maricopa, a point on the main line 35 miles southerly from Phoenix. The short-line mileage from San Francisco to Phoenix is via the Santa Fe over the Parker cut-off; from Los Angeles, via the Southern Pacific lines.

Sugar is produced at various points in California. Hawaiian cane sugar is refined at San Francisco and at Crockett, a point 29 miles east of San Francisco on the Southern Pacific; beet sugar is produced at Alvarado, Betteravia, Spreckels, Los Alamitos, Dyer, Delhi, Oxnard, and other points in the central and southern portions of the state. For the purpose of stating rates to Arizona, the refining and producing points of origin in California are included in one group. Rates on sugar from California are also grouped as to destination points. On the main line of the Santa Fe a destination group extends from Yucca, Ariz., to El Paso, and on the main line of the Southern Pacific from Yuma, Ariz., to El Paso. Los Angeles is the nearest point in the California group to Phoenix, and San Francisco possibly the farthest. The distance to Phoenix via the Santa Fe are 489 and 800 miles, and via the Southern Pacific, 451 and 920 miles respectively, from the two points of origin.

On May 1, 1916, the rates on sugar from the California group to Phoenix were 60 cents, minimum

weight 60,000 pounds, and 65 cents, minimum weight 36,000 pounds. Contemporaneously rates from the California group to points in the destination groups described were 5 cents lower than the corresponding Phoenix rates. This difference of 5 cents in favor of main-line points was fixed by us in *Arizona Corporation Commission* v. *A., T. & S. F. Ry. Co.*, 34 I. C. C., 158, in which we found the Phoenix rate of 75 cents, minimum 36,000 pounds, unreasonable to the extent that it exceeded, by more than 5 cents, the main-line rate to Maricopa. On June 25, 1918, these rates were increased 25 per cent, the main-line rates becoming 69 and 75 cents and the Phoenix rates 75 and 81.5 cents. Subsequently a flat increase of 22 cents was substituted for the percentage increases, and the rates to main-line points became 77 and 82 cents on November

62 I. C. C. [139]

(414) 25, 1919, and to Phoenix, 82 and 87 cents on February 18, 1920. On February 29, 1920, defendants canceled the rates to main-line and branch-line points, including Phoenix, under the lower minimum weight published in connection with roads under federal control and, as to such roads, increased the Phoenix rate under the minimum weight of 60,000 pounds to 83.5 cents which, apparently, was done by advancing the 5-cent difference over main-line points to 65.5 cents. In schedules filed to become effective May 14, 1920, the carriers attempted to bring the rates of nonfederal lines into harmony with those of the lines previously under federal control, but upon protest we suspended the

items carrying such increases. In *Sugar from California Points to Arizona,* 58 I. C. C. 737, we held that the cancellation of the 36,000-pound minimum was justified and vacated the order of suspension. The present rates, including the general increases authorized by us on July 29, 1920, are 96.5 cents to main-line points and $1.045 to Phoenix, minimum weight 60,000 pounds. The Phoenix rate applies to practically all points on the Arizona Eastern north of Maricopa and to all points on the branch line of the Santa Fe south of Ash Fork and as far west as Parker, Ariz., There is no movement of sugar from California through Phoenix to points beyond taking lower rates.

Complainants admit that the grouping of California sugar-producing points is advantageous, as it gives them the benefit of a wide purchasing market on a uniform rate. They contend, however, that the rates to Phoenix are unreasonable, in comparison with lower rates from the California group to points involving hauls for distances which are greatly in excess of those to Phoenix. In the subjoined statement the revenues per car, per ton-mile, and per car-mile yielded by the rates to Phoenix are compared with revenues produced by certain of the rates cited by complainants. The rates shown include the general increases authorized by us on July 29, 1920.

From—	To—	Distance.	Rate per 100 pounds.	Revenue. Per car.	Revenue. Per ton-mile.	Revenue. Per car-mile.
		Miles			*Mills.*	*Cents.*
Los Angeles, Calif.	Phoenix, Ariz.	451	[1]$1.045	$627.00	46.3	139
San Francisco, Calif.	Do.	800	[1] 1.045	627.00	26.1	78.3
Betteravia, Calif.	Do.	655	[1] 1.045	627.00	31.9	95.7
Do.	El Paso, Tex.	1,020	[1] .965	579.00	18.9	56.7
New Orleans, La.	Do.	1,192	[2] 1.080	388.80	18.1	32.6
San Francisco, Calif.	St. Paul, Minn.	2,154	[1] 1.025	615.00	10	28.6
Los Angeles, Calif.	Chicago, Ill.	2,231	1.09525	657.00	9.8	29.4

[1] Minimum weight 60,000 pounds.

[2] Minimum weight 36,000 pounds.

Defendants take the position that the rates on sugar from California producing points to the central and eastern sections of the (415) country

62 I. C. C. [140]

are on a subnormal basis due to the necessity of marketing the California product, which greatly exceeds local consumption, in competition with sugar refined at New Orleans and Atlantic Seaboard points; that a normal basis of rates would prevent the movement of California sugar because of the great disparity in distances from the competing refineries to the common markets; and that intermediate main-line points are given the benefit of these extremely low competitive rates. They attempt to justify the present rates to Phoenix on the grounds that the volume of movement is small and that market conditions present at El Paso and the other points cited by complainant are not met with at Phoenix. They argue that we recognized the potency of market competition in *Fourth Section Violations in Rates on Sugar,* 31 I. C. C., 511, by permitting the maintenance of lower rates on sugar from California to Missouri River points than those contemporaneously in effect to intermediate points on the Rock Island east of Tucumcari, N. Mex., in connection with routing, Southern Pacific to El Paso, El Paso & Southwestern to Tucumcari, Rock Island beyond. In that case we required the Southern Pacific to hold the El Paso rate from California as maximum at intermediate points, and denied the Santa Fe authority to charge lower rates from California to Trinidad, Colo., and points east thereof

than it contemporaneously maintained to intermediate points. Accordingly, these carriers reduced the main-line rates in Arizona and New Mexico to the level of the rates to El Paso and Trinidad, respectively.

A partial list of the shipments on which reparation is sought shows that 48 carloads moved during the period June, 1919, to August, 1920, inclusive, 34 being routed via Southern Pacific and 14 via Santa Fe. A statement filed by the defendants shows that during the years 1916, 1917, 1919, and the first six months of 1920, 348 cars aggregating 9,423 tons moved from California points to Arizona via Santa Fe, of which 78 cars aggregating 2,229 tons moved to Phoenix.

From Betteravia, which may be taken as fairly representative of the California group, the present rate to Phoenix yields, for a distance of 655 miles, revenues of $627 per car, 95.7 cents per car-mile, and 31.9 mills per ton-mile upon the basis of the tariff minimum weight of 60,000 pounds. A substantial volume of sugar moves from California to Phoenix in carloads. While, no doubt, relatively lower rates are justified to more distant points where the force of market competition is controlling, nevertheless, Phoenix is entitled to rates, which, measured by present-day standards, are just and reasonable. If, however, the rates to competitive points are remunerative, then clearly the rates to Phoenix are excessive, even after giving due con-

(416) sideration to the volume of traffic handled to the points in question, and the character of the haul into Arizona. The rate of 96.5 cents from California is carried on the main line of the Southern Pacific for a distance of 400 miles east of Maricopa. The application of the same rate to Phoenix, but 35 miles distant from Maricopa does not appear to be unreasonable. The Southern Pacific and the Arizona Eastern are properly treated as one line in this instance. *Pacific Creamery Co.* v. *S. P. Co.*, 42 I. C. C., 93, 96.

Complainants contend that the maintenance of rates from California of $1.045 to Phoenix and 96.5 cents to Tucson is unduly prejudicial to Phoenix, to the undue preference and advantage of Tucson. The record shows that Phoenix jobbers sell sugar at several points in territory contiguous to both Phoenix and Tucson, in competition with jobbers located at the latter point. While there is an indication that in some instances the Phoenix jobbers must shrink their profits to compete with Tucson, there is no evidence to show that this results from the difference in rates from California to the two competing points.

Complainants' request for the establishment of through routes and joint rates from San Francisco by way of Phoenix to Maricopa and points east thereof on the lines of the Southern Pacific to and including El Paso is substantially the same as was made in *Phoenix Chamber of Commerce* v. *Director General*, 62 I. C. C., 368, and the evidence is identical by reason of the stipulation into this record of

the testimony there introduced. In that case we found that the proposed arrangement had not been shown to be necessary or in the public interest and denied the petition. There is no basis for a different finding on this record.

We find that the rates attacked were, are, and for the future will be, unreasonable to the extent that they exceeded, exceed, or may exceed 96.5 cents. There is no evidence of record that complainants made shipments of sugar from California points to Phoenix, and paid and bore charges thereon at rates higher than those herein found reasonable. In the event that such shipments were made, complainants should file statements under rule V of the Rules of Practice, showing the details of such shipments, accompanied by appropriate proof in the form of an affidavit that the shipments were made and that the freight charges were paid and borne by complainants. If defendants object to proof in the form of an affidavit they may request a further hearing with respect to the subject matter thereof.

The prayer for a through route and joint rates from San Francisco by way of Phoenix to Maricopa and points east thereof on the line of the Southern Pacific, to and including El Paso, is denied.

An appropriate order will be entered.

62 I. C. C. [142]

ORDER.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D. C., on the 22d day of June, A. D. 1921.

No. 11532.

Traffic Bureau of the Chamber of Commerce, Phoenix, Ariz.; Hall-Pollock Company, Phoenix, Ariz.; Haas-Baruch & Company, Incorporated, Phoenix, Ariz.; The Melczer Company, Phoenix, Ariz.; and the Arizona Grocery Company, Phoenix. Ariz.,

v.

James C. Davis, Director General of Railroads, as Agent; Southern Pacific Company; Arizona Eastern Railroad Company; and The Atchison, Topeka and Santa Fe Railroad Company.

This case being at issue upon the complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said Division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation be, and they are hereby, notified and required to cease and desist, on or before September 17, 1921,

and thereafter to abstain, from publishing, demanding, or collecting their present rates for the transportation of sugar in carloads from California points to Phoenix, Ariz.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before September 17, 1921, upon notice to this Commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar in carloads from California points to Phoenix, Ariz., rates which shall not exceed 96.5 cents per 100 pounds.

It is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission, Division 1.

[Seal] GEORGE B. McGINTY,
Secretary. [143]

Thereafter the defendants in said proceeding before said Commission including the defendants in these causes and their connecting carriers, duly and regularly filed and published their tariffs effective September 17, 1921, ~~complying with the Commission's order in said Docket No. 11532,~~** and naming a rate of 96 cents per hundred pounds on sugar, in carloads, from points in California to Phoenix, Arizona, which said rate was one-half cent less than

**[See p. 426 for Stipulation as to correct matter.]

the rate of 96½ cents per hundred pounds found as a maximum rate ~~not unreasonable~~** for the future by said Commission in said Docket No. 11532.

Said rate of 96 cents per 100 pounds remained in effect until on or about July 1, 1922, upon which date, in accordance with the recommendations made by said Commission in a report in a proceeding known as Docket No. 13,293, Reduced Rates 1922, reported in Volume 68, I. C. C. Reports, at pages 676 and following, said rate of 96 cents was voluntarily reduced to 86½ cents per hundred pounds said last-mentioned rate of 86½ cents per hundred pounds was named in tariffs of said defendants herein, and of other carriers engaged in interstate commerce, and was duly and regularly filed with the Interstate Commerce Commission in accordance with law.

Said last-mentioned rate of 86½ cents per hundred pounds remained in effect until on or about January 10, 1924, upon which date the same was voluntarily reduced to 84 cents per hundred pounds; said last-mentioned rate of 84 cents was duly and regularly established by these defendants ~~and by other common carriers engaged in interstate commerce,~~** and was named in tariffs duly and regularly filed in accordance with law.

Said rates of 86½ cents per hundred pounds and 84 cents per hundred pounds were the rates which

**[See p. 426 for Stipulation as to correct matter.]

were successively in effect, and assessed upon complainant's shipments during the [144] period of movement thereof. Said rates are the rates referred to "as charged" upon said list of shipments hereinbefore set forth.

7. Said last-mentioned rate of 84 cents per hundred pounds remained in effect until February 25, 1925, upon which date the same was reduced to 71 cents per 100 pounds, pursuant to and in compliance with certain findings and orders made by said Commission in a proceedings known as Docket No. 14,449, reported in Volume 95, I. C. C. Reports, at pages 244, and following, in which preceeding the Traffic Bureau of the Phoenix Chamber of Commerce, and certain others ~~including the plaintiff~~** were complainants, and in which proceedings said complainants alleged that the rates on sugar from points in California, including the points of origin of the shipments of plaintiff herein, to Phoenix, Arizona, had been, were, and in the future would be, unreasonable. ~~Said report and order of said Commission in said proceeding, Docket No. 14449, were and are as follows:~~ ** [145]

**[See p. 426 for Stipulation as to correct matter.]

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INTERSTATE COMMERCE COMMISSION

No. 14449

TRAFFIC BUREAU OF PHOENIX CHAMBER OF COMMERCE ET AL., *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

26875—25

Washington: Government Printing Office: 1925

[146]

No. 14449

TRAFFIC BUREAU OF PHOENIX CHAMBER OF COMMERCE ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted July 14, 1923. Decided January 6, 1925

Rate on sugar, in carloads, from California points to Phoenix, Ariz., found to have been and to be unreasonable, but not unjustly discriminatory, or unduly prejudicial. Reasonable rate for future prescribed, and reparation awarded.

Roland Johnson for complainants.

E. W. Camp, Chalmers, Stahl, Fennemore & Longan, James R. Bell, F. H. Wood, F. B. Austin, G. B. Durbrow, Elmer Westlake, James E. Lyons and *G. P. Bullard* for defendants.

Roland Johnston, D. R. Johnson, and *L. G. Reif* for Arizona Corporation Commission.

REPORT OF THE COMMISSION.

By the COMMISSION:

Exceptions were filed by complainants to the report proposed by the examiner. We have reached conclusions differing from those proposed by him.

Complainants are the Traffic Bureau of the Chamber of Commerce, Phoenix, Ariz., an organization of shippers and citizens of Phoenix, and Haas-Baruch & Company, Hall-Pollock Company, the Melczer Company, and James A. Dick Company, Corporations, engaged in the wholesale grocery business at Phoenix. By complaint filed November 3, 1922, they allege that the rates on sugar, minimum 80,000 pounds, from San Francisco and other points in California to Phoenix are, and since February 17, 1921, have been unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul provision of the fourth section. The prayer is for reasonable and nonprejudicial rates for the future, and reparation on past shipments. The Arizona Corporation Commission intervened on behalf of complainants and the El Paso Chamber of Commerce also intervened. The rates will be stated in amounts per 100 pounds.

(245) Phoenix is the only point in Arizona served by both the Atchison, Topeka & Santa Fe and the Southern Pacific. It is at the terminus of a branch line of the Santa Fe extending south from Ashfork, Ariz., 194 miles, but California traffic over the Santa Fe is handled over a branch line, known as the Parker cut-off, extending from Cadiz, Calif., to Wickenburg, Ariz., a point on the Ashfork-Phoenix branch, approximately 54 miles north of Phoenix. The traffic from California moving over the Southern Pacific reaches Phoenix through the medium of the Arizona Eastern Railway, which connects with the Southern Pacific at Maricopa, 35 miles southerly from Phoenix. The points of production extend from San Francisco on the north to Los Angeles on the south and include a number of points where Hawaii and California beet sugar is refined. For the purpose of stating rates on sugar to Arizona, the refining points are included in one group and Arizona points are also grouped. The destination group includes all points on the main line of the Santa Fe from Yucca, Ariz., to El Paso, Tex. It also includes points on the main line of the Southern Pacific from Yuma, Ariz., to El Paso, but the fifth-class rates are observed as maxima, which produces rates at Yuma and a few contiguous points slightly lower than the commodity rate. The distances to Phoenix over the Santa Fe are 489 and 800 miles, and over the Southern Pacific 451 and 921 miles, from Los Angeles and San Francisco, respectively, the nearest and most distant refining points. Using the shorter of the two routes in

each instance, the average distance from Los Angeles and San Francisco to Phœnix is about 625 miles. The complainants presented exhibits purporting to show that the average short-haul distance from the points of origin involved to Phoenix is approximately 581 miles.

From September 17, 1921, to and including June 30, 1922, a rate of 96 cents, minimum 60,000 pounds, applied on sugar from the California points to Phoenix. On the latter date it was reduced under the general reductions of 1922 to 86.5 cents. The 86.5-cent rate also applied to practically all mainline points on the Southern Pacific from the California State line to El Paso, Tex., inclusive, including Tucson, Ariz., said to be a point competitive with Phoenix. Following the general reductions of 1922, the defendants until recently maintained rates on sugar ranging from 79 cents at St. Louis, Mo., and Chicago, Ill., and a number of points grouped therewith, to 83 cents at Burlington, Iowa, and points grouped therewith, minimum 80,000 pounds. To the same territory somewhat higher rates subject to a minimum of 60,000 pounds were maintained, the (246) rate to Chicago be-

95 I. C. C. [148]

ing 91 cents. Complainants contend that the rate to Phoenix should not exceed the rates to the more distant points, and, in fact, should be lower than the rates to El Paso and Tucson, reflecting the shorter hauls to Phoenix than to El Paso and Tucson. The rates to the latter points apply in con-

nection with a 60,000 pounds minimum, the same as to Phoenix.

At the hearing, the complainants offered testimony intended to show unjust discrimination and undue prejudice against Phoenix and preference for Tucson, which consisted principally of a comparison of the carload rates to and the less-than-carload rates beyond Phoenix, with the rates to and beyond Tucson. It was claimed that Tucson merchants have some advantage over merchants at Phoenix under the in-and-out rates. The outbound rates from Phoenix to Southern Pacific points are on a two-line basis, while the rates from Tucson to the same points are on a lower one-line basis prescribed by the Arizona Corporation Commission, and the differences in the total in-and-out rates are represented by the differences in the outbound rates. Outbound shipments from Tucson to points on the Arizona Eastern apparently are often handled by motor trucks rather than by rail. No further discussion will be made of the Tucson situation inasmuch as the complaint appears to raise the issue of undue prejudice and discrimination only as to points east of Phoenix to which the rates were lower than to that point. No evidence of direct competition between Phoenix, on the one hand, and points alleged in the complaint to be preferred, on the other, appears of record.

Complainants' evidence in support of their allegation of unreasonableness consists principally of comparisons with rates on sugar from California to representative points in the Middle West such

as Burlington and Chicago, and from Sugarland, Tex., New Orleans, La., and Colorado points to El Paso and Phoenix. At the time of the hearing, many of these rates were in issue in *Sugar Cases of 1922*, 81 I. C. C. 448, decided July 14, 1923. In that decision fourth-section relief authorized by *Fourth Section Violations in Rates on Sugar*, 31 I. C. C. 511, permitting lower rates to Chicago and other Middle West points than to intermediate points, was withdrawn. The rates have subsequently been revised in conformity with the fourth section, the rate to Chicago becoming 84 cents, minimum 80,000 pounds, which rate is not exceeded at intermediate points. A rate of 84 cents has accordingly been established to Phoenix and points on the Southern Pacific in Arizona and New Mexico, and to El Paso, in connection with which rate a minimum of 60,000 pounds has been maintained.

95 I. C. C. [149]

(247) The following table shows a comparison of the present rate on sugar to Phoenix with rates offered by the complainants as indicating the unreasonableness of the rate under attack:

From—	To—	Distance	Rate	Minimum weight	Car-mile earning	Ton-mile earning
		Miles	*Cents*	*Pounds*	*Cents*	*Mills*
California	Phoenix	625	84	60,000	80.64	26.9
Sugarland	El Paso	804	71	36,000	31.79	17.66
New Orleans	do	1,193	86	36,000	25.95	14.42
Lamar, Colo	do	749	80.5	36,000	38.69	21.49
California	do	1,054	84	60,000	47.8	15.9
Do	Tucson	741	84	60,000	68.0	22.7

It is probable that the car-mile earnings shown, being based upon varying minimum weights, do not properly reflect the relative situation existing as to actual movements. The record does not, however, show the actual loading.

In *Memphis-Southwestern Investigation*, 77 I. C. C. 473, we prescribed for application in the general territory comprising Louisiana, Arkansas, and southern Missouri a distance scale of rates on sugar in which the rate for 625 miles is 58 cents. The present rate from California to Phoenix is approximately 43 per cent higher. In *Arizona Packing Co.* v. *A. E. R. R. Co.*, 81 I. C. C. 115, we prescribed on livestock, packing-house products, and fresh meats scales of rates to and from points in Arizona higher than scales also prescribed by us in Arkansas, Oklahoma, Louisiana, and Texas, known as the 1716 scales, but generally less than 30 per cent in excess of those rates. In that case we said, at page 120, with respect to rates from points in Arizona to points in California on beef cattle, sheep, and goats prescribed by us in *American National Live Stock Asso.* v. *S. P. Co.*, 26 I. C. C. 37:

> As originally prescribed, that scale was about 30 per cent higher than the 1716 scale, but this spread has been considerably narrowed in the course of general increases and reductions which have since been made. Rates based on the Arizona-California scale have been voluntarily established by the Santa Fe to points in Arizona from stations in New Mexico on its line west of Albuquerque.

The average revenue per ton-mile and per car-mile for the Atchison, Topeka & Santa Fe (entire line) for 1921 are shown as 16.42 mills and 29.96 cents, respectively, for an average haul of 331.69 miles. Similar figures for the Southern Pacific (Pacific system) are for revenue per ton-mile 17.31 mills, revenue per car-mile 34.93 cents, and average haul 288.51 miles. The figures for 1921 do not include the general reduction of 10 per cent made in 1922.

Defendants direct attention to the relatively small consuming markets in Arizona for sugar, and

show that the total movement [150] (248) to Phoenix is somewhat less than 100 carloads per annum. They further contend that there is no necessity, commercially or otherwise, for the establishment of lower rates on a minimum of 80,000 pounds than on a minimum of 60,000 pounds.

The rates on sugar from California points to Phoenix have been before the commission in a number of cases. In *Phoenix Chamber of Commerce* v. *Director General,* 62 I. C. C. 412, the commission found that the then existing rate of $1.045 to Phoenix was unreasonable to the extent that it exceeded 96.5 cents which contemporaneously applied to Tucson, Maricopa, Ariz., and other Southern Pacific main-line points. The circumstances under which the rates on sugar were established and the conditions surrounding its transportation to Phoenix are fully set out in that case and need not be further discussed here.

We find that the rates assailed have not been shown to be unjustly discriminatory or unduly preferential or prejudicial, but we find the rate from California points involved to Phoenix to have been and to be unreasonable to the extent that it exceeded and exceeds 79 and 71 cents per 100 pounds, respectively, prior and subsequent to July 1, 1922, minimum 60,000 pounds. We further find that complainants, Haas-Baruch & Company, Hall-Pollock Company, and the Melczer Company, made shipments and paid and bore charges thereon at the rate herein found unreasonable; that they have been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that they are entitled to reparation with interest. Complainants, Haas-Baruch & Company, Hall-Pollock Company, and the Melczer Company should comply with Rule V of the Rules of Practice.

An order for the future will be entered.

HALL, *Commissioner*, dissenting:

Some of these complainants came before us in June, 1920, attacking the rates on sugar, in carloads, from the California refineries to Phoenix and asking for reparation, just as they do here. The carload minimum then, as now, was 60,000 pounds. We found the rate unreasonable to the extent that it exceeded 96.5 cents, which we then prescribed for the future. That decision was made June 22, 1921. *Phoenix Chamber of Commerce* v. *Director General*, 62 I. C. C. 412. They now come by complaint filed November 3, 1922, and allege that a rate on the same traffic of 96 cents, 0.5 cent lower

than that so prescribed, has been unreasonable since February 17, 1921, four months prior to our former decision, and again ask reparation. Meantime, on July 26, 1922, we had found not unreasonable a rate of 96.5 cents, minimum 60,000 pounds, from California refining points to destinations in Nevada and Utah for hauls ranging from 419 to 823, miles,

95 I. C. C.

[151] (249) as compared with the hauls here considered ranging from 489 to 800 miles over the Santa Fe, and 451 to 921 miles over the Southern Pacific. *Nevada Public Service Commission* v. *S. P. Co.*, 73 I. C. C. 240. That rate also was reduced by the carriers to 96 cents. The general 10 per cent reduction of July 1, 1922, brought this reasonable rate down to 86.5 cents and later, in the general sugar readjustment, the carriers established to Phoenix a rate of 84 cents, minimum 60,000 pounds. All of these were lower than what we had found reasonable and prescribed.

The majority do not reverse those decisions. They do not show change in circumstances and conditions but refer to them as "fully set out" in *Phoenix Chamber of Commerce* v. *Director General*, *supra*. And yet they find unreasonable rates lower than the rate prescribed in that case, and award reparation to a level 17.5 cents lower than that found reasonable, for a period which begins four months before that case was decided.

The rate of 84 cents, minimum 80,000 pounds, established January 11, 1924, as a result of our findings in *Sugar Cases of 1922*, 81 I. C. C. 448, in which we declined to continue fourth-section relief

as to rates to Chicago, Ill., is blanketed from Chicago to and beyond Phoenix. The rate to Chicago under the 60,000-pound minimum is 91 cents. Comparison of the rates to the nearest and farthest points in a rate blanket of this extent is futile. The rate of 84 cents to Chicago is necessary if California sugar, concededly far exceeding the local demands, is to find a market in the Middle West in competition with sugar from refineries on the Atlantic seaboard and Gulf of Mexico. Other and broader blankets respond, like this, to the marketing demands of Pacific coast commodities. They should not be lightly disturbed.

For the average distance of 625 miles to Phoenix this 84-cent rate earns 26.8 mills per ton-mile, which compares favorably with 27.3 mills per ton-mile under the average present rate of 82 cents from California refineries to destinations in Nevada and Utah considered in the *Nevada case, supra,* for an average distance of 600 miles. There the annual movement was shown to be 79 carloads and here less than 100. The majority ignore these comparisons but rest on others less pertinent.

There is no evidence as to the volume of movement under the rates to El Paso from the refineries at Sugarland, Tex., New Orleans, La., and Lamar, Colo., or as to transportation conditions generally. A witness for defendants testified that the rates to El Paso reflect competition from these three refining points and that in this respect El Paso is comparable to Chicago, where the rates are depressed by competition from the Atlantic, the Pa-

cific, and the Gulf [152] (250) refineries. Nor
95 I. C. C.
is there any evidence that conditions surrounding movement of sugar in this territory are such as to warrant comparison with the Memphis-Southwestern scale. Lacking that evidence we look in vain to *Arizona Packing Co.* v. *A. E. R. R. Co.*, 81 I. C. C. 115, cited by the majority.

The reasonableness of the basis prescribed is not self-demonstrative. Nor is this failure of demonstration supplied by the evidence of record, by the comparison with the Memphis-Southwestern scale, injected by the majority, or by the necessities of the case. Under such circumstances the complaint should be dismissed. I am authorized by Chairman AITCHISON and Commissioners ESCH and LEWIS to say that they concur in this expression of dissent. [153]

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 6th day of January, A. D. 1925.

No. 14449

Traffic of the Phoenix Chamber of Commerce; Haas-Baruch & Company; Hall-Pollock Company; and James A. Dick Company

v.

The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Arizona Eastern Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before February 25, 1925, and thereafter to abstain, from publishing, demanding, or collecting their present rates for the

transportation of sugar, in carloads, from points in California to Phoenix, Ariz.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before February 25, 1925, upon notice to this commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, from points in California to Phoenix, Ariz., rates which shall not exceed 71 cents per 100 pounds, minimum 60,000 pounds.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the commission.

[Seal] GEORGE B. McGINTY,
Secretary. [154]

In compliance with said Commission's order in said Docket No. 14449, the defendants therein, including the defendants in these causes, established, on or about February 25, 1925, a rate of 71 cents per 100 pounds on sugar, in carloads, from all points in California, to Phoenix, Arizona, which said rate was duly and regularly published in tariffs filed with said Commission, in accordance with law.

8. Thereafter and on February 8, 1927, said Interstate Commerce Commission reopened said proceeding, Docket No. 14,449, upon petition of the defendants therein, for oral argument jointly with

a subsequent proceeding brought by the Traffic Bureau of the Phoenix Chamber of Commerce and certain others (including plaintiff) as complainants, and known as Docket No. 16,742.

In said last-mentioned proceeding, Docket No. 16,742, said Commission, on March 12, 1928, made and rendered its opinion and order, reported in Volume 140 of I. C. C. Reports, at pages 171 and following, finding that the rates on sugar, in carloads, from points in California designated as the northern California group (which said group includes, among other points, San Francisco, Crockett, and Spreckels) to Phoenix, Arizona, had in the past been unreasonable to the extent that they exceeded 81 cents prior to July 1, 1922, and 73 cents on and after said last-mentioned date, and that said rates on sugar from points in California designated as the southern California group (which said group includes, amont other points, Betteravia and Oxnard, California) to Phoenix, Arizona, had in the past been unreasonable to the extent that they exceeded 79 cents prior to July 1st, 1922, and 71 cents on and after said date; and that certain of the complainants in said proceeding (including plaintiff herein) had made shipments at the rates found in said proceeding to have been unreasonable; that they had paid and borne the charges thereon [155] and were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates found in said proceeding to have been reasonable; and that said complainants were entitled to repara-

tion, with interest. ~~Said report and order of said Commission in said Docket No. 16742, were and are as follows:~~ ** [156]

**[See p. 426 for Stipulation as to correct matter.]

13146

INTERSTATE COMMERCE COMMISSION

No. 16742[1]

TRAFFIC BUREAU OF PHOENIX CHAMBER OF COMMERCE ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted April 6, 1927. Decided March 12, 1928.

Rates on sugar, in carloads, from California points to destinations in Arizona and from California

[1]This report also comprises No. 16770, Bashford-Burmister Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 1), Central Commercial Company *v.* Same; No. 16770 (Sub-No. 2), Wheeler-Perry Company *v.* Santa Maria Valley Railroad Company et al.; No. 16770 (Sub-No. 3), T. F. Miller Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 4), E. F. Sanguinetti *v.* Southern Pacific Company et al.; No. 16770 (Sub-No. 5), Arizona Grocery Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 6), Arizona Wholesale Grocery Company et al. *v.* Arizona Eastern Railroad Company et al.; No. 16770 (Sub-No. 7), C. N. Cotton Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 8), Babbitt Brothers Trading Company et al. *v.* Same; No. 16770 (Sub-No. 9), Wm. H. Dagg Mercantile Company *v.* Same; No. 17549, Phelps Dodge Mercantile Company *v.* Same; No. 17549 (Sub-No. 1), Baffert & Leon *v.* Same; No. 17466, United Verde Extension Mining Company *v.* Same; No. 17781, Simpson-Ashby Company *v.* Southern Pacific Company; and Nos. 14140, Solomon-Wickersham Company *v.* Santa Maria Valley Railroad Company et al., and 14449, Traffic Bureau, Phoenix Chamber of Commerce et al. *v.* Atchison, Topeka & Santa Fe Railway Company et al., reopened for argument.

and Colorado points to Gallup, N. Mex., found unreasonable. Reasonable rates prescribed and reparation awarded. Original findings in Nos. 14449 and 14140 modified in part. Former reports, 95 I. C. C. 244 and 101 I. C. C. 667.

Roland Johnston, Chas. E. Blaine, Calvin L. Blaine, F. W. Pullen, and *R. S. Sawyer* for complainants.

James R. Bell, G. H. Muckley, James E. Lyons, H. H. McElroy, A. Burton Mason, J. L. Fielding, Del W. Harrington, E. W. Camp, Platt Kent, F. W. Mielke, and *Berne Levy* for defendants.

REPORT OF THE COMMISSION

CAMPBELL, *Chairman:*

These cases are related and will be disposed of in one report. Defendants in all of the cases and complainants in Nos. 16742, 16770, and Sub-Nos. 1, 3, 4, 5, and 9 filed exceptions to the proposed report of the examiners, and defendants replied to complainants' exceptions. The cases were orally argued before us.

In these complaints it is alleged that the rates on sugar, in carloads, from California points to destinations in Arizona and from (172) Califor-

nia, Kansas, and Colorado points to Gallup, N. Mex., were and are unreasonable and in some instances unduly prejudicial and preferential. We are asked to prescribe just and reasonable rates for the future and to award reparation. Rates and rate differences are stated in amounts per 100 pounds.

In No. 16742, filed February 9, 1925 and No. 17781, filed informally March 16, 1925, and formally November 27, 1925, reparation is asked, respectively, on shipments from California points to Phoenix to the basis of the rate of 71 cents found reasonable on and after July 1, 1922, in No. 14449, *Phoenix Chamber of Commerce* v. *A., T. & S. F. Ry. Co.*, 95 I. C. C. 244, reopened for argument with these consolidated cases.

In No. 16770 (Sub-Nos. 1 to 9), filed on various dates from February 17 to May 5, 1925, inclusive, it is alleged that the rates from California points to Prescott, Kingman, Tucson, Clarkdale, Yuma, Bowie, Safford, Globe, Flagstaff, Winslow, and Holbrook, Ariz., and from California, Kansas, and Colorado points to Gallup were and are unreasonable. There are also allegations that the rates assailed were and are unduly prejudicial to Tucson and unduly preferential of Phoenix; unduly prejudicial to Bowie, Safford, and Globe and unduly preferential of Phoenix and other points taking the same rate, Lordsburg and Deming, N. Mex., and El Paso, Tex.; unduly prejudicial to Gallup and unduly preferential of Albuquerque, N. Mex., and El Paso; and unduly prejudicial to Kingman, Flagstaff, Winslow, and Holbrook and unduly preferential of Albuquerque and Phoenix.

In Nos. 17549, 17549 (Sub-No. 1), and 17466, filed, respectively, on September 3, 1925, February 9, 1926, and August 24, 1925, the rates from California points to Bisbee, Douglas, Clifton, Tucson, and Clarkdale, Ariz., are alleged to have been and

to be unreasonable and also unduly preferential of Phoenix and other points.

No. 16742 and No. 16770 (Sub-Nos. 1 to 9) were heard together. Nos. 17549, 17549 (Sub-No. 1), and 17466 were heard together. The parties in No. 17781 agreed to submission of the case upon the record in Nos. 17549, 17549 (Sub-No. 1), and 17466, except as to proof of payment of freight charges.

Phoenix is the only point in Arizona served by both the Atchison, Topeka & Santa Fe, hereinafter referred to as the Santa Fe, and the Southern Pacific. It is at the terminus of a branch line of the Santa Fe extending south from Ash Fork, Ariz., 194 miles, but California traffic over the Santa Fe is handled over a branch line, known as the Parker cut-off, extending from Cadiz, Calif., to Wickenburg, Ariz., a point on the Ashford-Phoenix branch, approximately 54 miles north of Phoenix. At the

time of the hearings traffic from California (173) moving over the Southern Pacific reached Phoenix over the former Arizona Eastern Railroad, which connects with the main line of the Southern Pacific at Maricopa, Ariz., 35 miles south of Phoenix. Since the hearings the Southern Pacific has opened its new line from Wellton, Ariz., to Phoenix. The distances over this new line are 25 miles shorter than via Maricopa. From Los Angeles and San Francisco the present distances to Phoenix are, respectively, 489 and 800 miles over the Santa Fe and 426 and 896 miles over the Southern Pacific.

Kingman, Williams, Flagstaff, Winslow, Holbrook, and Gallup are on the main line of the Santa

Fe. Clarkdale is at the terminus of a branch line of the Santa Fe, 38 miles in length, which extends from Drake, Ariz., a point 21 miles south of Ash Fork on the Maricopa-Phoenix line.

Yuma, Tucson, and Bowie are on the main line of the Southern Pacific. Safford and Globe are on a branch line of that carrier extending from Bowie. Clifton is on a branch line of the same carrier extending from Lordsburg. Bisbee and Douglas are served by the so-called southern lines of the Southern Pacific, formerly the El Paso & Southwestern.

The California points of production extend from San Francisco on the north to Los Angeles on the south. They include San Francisco and Crockett, the only two points at which Hawaiian cane sugar is refined, as well as all points at which beet sugar is produced. All California refining points take the same rates to Arizona destinations.

In *Maier & Co.* v. *Southern Pacific Co.*, 29 I. C. C. 103, decided January 6, 1914, a rate on sugar from Los Angeles and Los Alamitos, Calif., to Benson, Ariz., of 60 cents, minimum 36,000 pounds, was prescribed. This was the contemporaneous rate to El Paso, a point more distant than Benson on the same line. The 60-cent rate was established generally to main-line Southern Pacific and Santa Fe points in Arizona and New Mexico, and the San Francisco rate was made 10 cents higher.

In *Fourth Section Violations in Rates on Sugar*, 31 I. C. C. 511, we denied authority to continue rates on sugar from San Francisco and other sugar-producing points in California to Trinidad, Colo., and

other points east thereof, which were lower than the rates concurrently applicable on like traffic to intermediate points on the line of the Santa Fe, and also denied authority to the Southern Pacific, El Paso & Southwestern, and Chicago, Rock Island & Pacific to continue lower rates on sugar from the points of production described to the Missouri River than the rates concurrently applicable to intermediate points west of Tucumcari, N. Mex. In addition

(174) to making substantial reductions in the rates in connection with the minimum of 36,000 pounds, the carriers on November 15, 1914, established rates, with a minimum of 60,000 pounds, from all California producing points to practically all Arizona points on a basis 5 cents lower than the rates from Los Angeles to the same destinations upon the lower minimum.

In *Arizona Corporation Commission* v. *A., T. & S. F. Ry. Co.*, 34 I. C. C. 158, the rates from California to Phoenix and Prescott were found to be unreasonable to the extent that they exceeded the rates to the main-line junction points by more than 5 cents. As a result, on May 1, 1916, the rates from California to Phoenix and Prescott became 60 cents, minimum 60,000 pounds, and 65 cents, minimum 36,000 pounds. On June 25, 1918, the main-line rates were increased 25 per cent to 69 and 75 cents, respectively, and the Phoenix and Prescott rates became 75 and 81.5 cents. Subsequently a flat increase of 22 cents was substituted for the percentage increase and the rates to main-line points be-

came 77 and 82 cents on November 25, 1919, and to Phoenix and Prescott 82 and 87 cents on February 18, 1920.

On February 29, 1920, the carriers cancelled the rates to main-line and branch-line points under the lower minimum weight published in connection with roads under Federal control and, as to such roads, increase the Phoenix and Prescott rate under the minimum of 60,000 pounds to 83.5 cents. This cancellation, as to nonfederal lines, was found justified in *Sugar from California Points to Arizona*, 58 I. C. C. 737.

On August 26, 1920, the rates on sugar from California, minimum 60,000 pounds, became 96.5 cents to main-line points and $1.045 to Phoenix and Prescott. In *Phoenix Chamber of Commerce* v. *Director General*, 62 I. C. C. 412, decided June 22, 1921, the Phoenix rate was found unreasonable to the extent that it exceeded 96.5 cents, and reparation was awarded on that basis. On June 27, 1921, the carriers reduced the main-line rates to 96 cents, and on September 17, 1921, that rate was established to both Phoenix and Prescott. All of these rates were reduced on July 1, 1922, to 86.5 cents.

In *United Verde Mining Co.* v. *A., T. & S. F. Ry. Co.*, 88 I. C. C. 5, the rates on classes and commodities, including sugar, from California, among other origin territories, to Clarkdale were found unreasonable to the extent that they exceeded the contemporaneous rates to Drake, and on October 16, 1922, the rate on sugar from California to Clarkdale was reduced from $1.16 to 86.5 cents.

In *Sugar Cases of 1922*, 81 I. C. C. 448, fourth-section relief authorized in *Fourth Section Violations in Rates on Sugar, supra*, permitting lower rates to Chicago, Ill., and other points in the Middle

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(175) West than to intermediate points, was withdrawn. In the revision following this decision the rate to Chicago, minimum 80,000 pounds, became 84 cents, and this rate was established at intermediate points, including Gallup and main-line Southern Pacific and Santa Fe points in Arizona, but in connection with a minimum of 60,000 pounds. The same rate and minimum were established to Phoenix, Prescott, and Clarkdale.

In our original report in No. 14449 we again considered the rate from California points to Phoenix and found it to have been and to be unreasonable to the extent that it exceeded 79 and 71 cents, respectively, prior and subsequent to July 1, 1922. Reparation was awarded on that basis. The 71-cent rate was established to Phoenix and to intermediate points on the Southern Pacific and on the route of the Santa Fe over the Parker cut-off, effective February 25, 1925. In our original report in No. 14140, *Solomon-Wickersham Co.* v. *S. M. V. R. R. Co.*, 101 I. C. C. 667, reopened and here before us on argument, the rate on sugar from California points to Bowie was found to have been and to be unreasonable to the extent that it exceeded 83 and 75 cents, respectively, before and after July 1, 1922. Reparation was awarded on that basis. The reduced rate was established to Bowie and to Tucson,

an intermediate point, effective October 27, 1925. The reduction to Bowie was 9 cents, and on the date named the Southern Pacific made reductions of the same amount to Safford and Globe, resulting in rates of 80.5 and 85.5 cents, respectively. No change was made in the Clifton rate of 94.5 cents.

Summarized, the present rates, minimum 60,000 pounds, are 71 cents to Yuma and Phoenix, 75 cents to Tucson and Bowie, 80.5 cents to Safford, 84 cents to Kingman, Williams, Flagstaff, Winslow, Holbrook, Prescott, Clarkdale, Bisbee, Douglas, and Gallup, 85.5 cents to Globe, and 94.5 cents to Clifton.

The general transportation conditions from California to Arizona are fully discussed in the cases cited and also in *Arizona Corporation Commission* v. *A. E. R. R. Co.*, 113 I. C. C. 52, and will not be further discussed here. The latter case has since been reopened. In *Arizona Cattle Growers Asso.* v. *A. Ry. Co.*, 101 I. C. C. 181, division 4 approved of prescribed rates on cattle, in carloads, from points in Arizona to points in California which were approximately 20 per cent higher than the corresponding rates for like distances in Oklahoma and Texas. The same level of rates was approved or prescribed in that case from branch-line as from main-line points in Arizona.

In Nos. 16742, 16770, and 16770 (Sub-Nos. 1 to 9) counsel asks reparation on shipments to Phoenix on the basis of 71 cents, and contends that rates to the other destinations should be graded like (176)

the rate to Bowie prescribed in the first report in No. 14149, or else that there should be reasonable

groupings. In Nos. 17549, 17549 (Sub-No. 1), and 17466 counsel contends that the origin group should be divided into two parts, the first to include Los Angeles, Dyer, Los Alamitos, San Pedro, and Oxnard, and the second San Francisco, Betteravia, Spreckles, Tracy, Alvarado, and Crockett. The principal counsel in the latter cases is also counsel for complainants in No. 16770 (Sub-Nos. 6, 7, and 8). The rates now suggested from the proposed southern group are 54 cents to Phoenix, Tucson, and Clarkdale, 59 cents to Bisbee, and 64 cents to Clifton, and rates 10 cents higher from the proposed northern group.

The rate of 71 cents to Phoenix prescribed in the original report in No. 14449 was based on a distance of 625 miles, which is approximately one-half of the sum of the short-line distances from Los Angeles and San Francisco. Reference was made in that report to the fact that under the distance scale on sugar prescribed in *Memphis-Southwestern Investigation,* 77 I. C. C. 473, for application in the general territory comprising Louisiana west of the Mississippi River, Arkansas, and southern Missouri, the rate for 625 miles is 58 cents. The rate of 71 cents prescribed is about 121 per cent of 58 cents.

The rates proposed by complainants are lower than 121 per cent of the Memphis-Southwestern scale, and in justification thereof complainants point to the fact that the minimum weight prescribed in connection with that scale is 36,000 pounds, as compared with 60,000 pounds under the rates assailed. In *Oklahoma Traffic Asso.* v. *A. G. S. R. R. Co.,*

113 I. C. C. 635, the Memphis-Southwestern scale was prescribed on sugar from New Orleans, La., and points in Louisiana taking the same rates, and from Sugarland and Texas City, Tex., to points in Oklahoma, subject to a minimum of 60,000 pounds.

Defendants are opposed to a disturbance of the origin grouping and to grading of rates at destination. They contend that because of the competitive situation the present origin and destination groupings are of advantage to producers and distributors of sugar. However, if the rates are to be graded at destination they favor breaking up the origin blanket into two groups. Defendants subscribe to a basis of rates from California to Arizona which is about 121 per cent of the rates for the same distances under the Memphis-Southwestern scale, provided that the rates to Arizona points are based upon the weighted-average haul.

As stated, the only California points at which cane sugar is refined are San Francisco and Crockett. The southern California distributors of beet sugar stock a limited amount of cane sugar in order to fill orders for mixed carloads containing certain

varieties of sugar (177) not obtainable at beet-sugar refineries. The production of beet sugar in California during 1925 was as follows:

Producing point	Quantity	Producing point	Quantity
	Tons		*Tons*
Dyer	9,095	Tracy	8,297
Los Alamitos	2,010	Alvarado	9,580
Oxnard	15,310		
Betteravia	18,559	Total	92,917
Spreckles	30,066		

The production at the southern California points of Dyer, Los Alamitos, and Oxnard was 28.43 per cent of the total production for the State during 1925. In addition there was a substantial movement of sugar by water to San Pedro, Calif.

During the past several years, due to blight, drought, and the use for other purposes of land formerly planted in beets, there has been a substantial diminution in the amount of beet sugar produced in southern California and, as a consequence, a reduction in the number of refineries. The following table, giving movements from California refineries on the Southern Pacific to destinations in Arizona and New Mexico and to El Paso, shows that there has been a substantial reduction, both in the volume of movement from southern California to the territory of destination described and in the ratio such tonnage bears to the tonnage from northern California:

	Northern California			Southern California		
	Cars	Tons	Per cent	Cars	Tons	Per cent
Year 1921.....	187	5,920	24	265	8,519	[illegible]
Year 1922.....	188	5,920	39.4	265	8,423	70.6
Year 1923.....	247	7,754	72.9	67	2,129	27.1
Year 1924.....	313	9,856	86	44	1,415	14
Year 1925.....	504	15,615	95.5	23	714	4.5

In addition to the above there were shipments of sugar from San Francisco over the Santa Fe to destinations on its own line west of Albuquerque. In 1925 they amounted to 107 cars, weighing 3,029 tons. This additional tonnage changes the percentages for 1925 to 96.3 per cent from northern California and 3.7 per cent from southern Cali-

fornia. Of the total of 611 cars from northern California, 227 moved from San Francisco and 370 from Crockett. The weight of the shipments from these two points aggregated 18,490 tons. Only 14 cars moved from other northern California points, of which 11 moved from Spreckles and 3 from Betteravia.

We have upon this record no serious contention from producers, distributors, or consumers that a breaking up of the present exten- (178) sive

origin and destination groupings would be detrimental to their interests. Bearing in mind the length of time during which the present California group has existed and the fact that until recent years the movement has been substantial from both northern and southern California, we do not find that group as such to have been or to be unreasonable; but in view of the fact that most of the movement now is from two of the most distant points of shipment, an origin group approximately 500 miles in length is no longer justified. A more reasonable adjustment for the future would seem to require the breaking up of the origin territory into two groups, the northern group extending from San Francisco and Crockett on the north to Spreckles on the south, and the southern group extending from Betteravia on the north to Dyer on the south.

Since the hearings in these cases we have decided *Consolidated Southwestern Cases,* 123 I. C. C. 208, in which new distance scales of rates were pre-

scribed for application on classes and commodities generally throughout the Southwest. The scale on sugar prescribed in those cases, hereinafter referred to as the southwestern scale, is 30 per cent of the first-class rates therein prescribed and will apply in connection with a minimum weight of 60,000 pounds. The following table shows the average short-line distances from the southern and northern groups to points or groups of destination and compares the rates proposed by certain of complainants with rates on basis of 120 per cent of the southwestern scale for like distances:

	From southern group			From northern group		
	Distance	Complainants' proposed rates	120% of southwestern rates	Distance	Complainants' proposed rates	120% of southwestern rates
	Miles	*Cents*	*Cents*	*Miles*	*Cents*	*Cents*
From Group 1 to Yuma, Ariz.	267	40	45.5	637	50	72
From Group 2 to Kingman, Ariz.	388	47	56.5	645	57	73
From Group 3 to Phoenix, Ariz.	467	55	61	749	65	79
From Group 4 to—						
Tucson, Ariz.	519	.....	.....	847	.....	.....
Prescott, Ariz.	526	.....	.....	782	.....	.....
Williams, Ariz.	527	.....	.....	783	.....	.....
Flagstaff, Ariz.	561	.....	.....	818	.....	.....
Clarkdale, Ariz.	563	.....	.....	820	.....	.....
Group average	539	55	65	810	65	83
From Group 5 to—						
Winslow, Ariz.	619	.....	.....	876	.....	.....
Bisbee, Ariz.	628	.....	.....	956	.....	.....
Bowie, Ariz.	634	.....	.....	961	.....	.....
Douglas, Ariz.	643	.....	.....	971	.....	.....
Holbrook, Ariz.	652	.....	.....	909	.....	.....
Group average	635	59	72	935	69	89
From Group 6 to—						
Safford, Ariz.	674	60	74.5	1,001	70	92.5
From Group 7 to—						
Gallup, N. Mex.	747	.....	.....	1,004	.....	.....
Clifton, Ariz.	753	.....	.....	1,081	.....	.....
Globe, Ariz.	758	.....	.....	1,085	.....	.....
Group average	752	64	79	1,057	74	95

(179) No. 16670 (Sub-No. 7) brings in issue the reasonableness of the rates from Colorado and Kansas refineries to Gallup, and contains a prayer for reparation on shipments subsequent to March 31, 1923. Prior to June 25, 1918, the rate on sugar from transcontinental Group E, which includes New Orleans, to Pacific coast points was 85 cents, minimum 60,000 pounds, and this rate applied as maximum from Kansas and Colorado points. The general increases and reduction resulted in rates from Colorado and Kansas, respectively, to Arizona points on the Santa Fe of $1.195 and $1.28, the difference resulting from general increases of 25 and 33⅓ per cent, respectively, from Colorado and Kansas on August 26, 1920. At the time of the hearing the fifth-class rate of $1.145 was applicable on sugar from Colorado refineries to Gallup. At that time a commodity rate of 75 cents applied from Colorado points to Albuquerque, and on August 1, 1925, the present commodity rate of 84 cents, minimum 60,000 pounds, was established from the same points to Gallup. The present rate to Albuquerque is 76 cents, and the same rate applies from Denver and Pueblo, Colo., to El Paso. To Fort Worth, Tex., the rate is 72 cents, minimum 36,000 pounds.

The record fails to show any movement, actual or prospective, from Kansas, and the rates from that State will not be further considered.

The Colorado points of origin are shown by complainant as including Denver, Fort Collins, Greeley, Holly, Lamar, Longmont, Loveland, Las

Animas, Lupton, Rocky Ford, Swink, and Windsor. The Santa Fe, which is the only carrier serving the Colorado group named as defendant herein, carries rates to points on its line in Arizona and New Mexico only from Holly, Lamar, Las Animas, Rocky Ford, and Swink. The average distance from the group to Gallup is shown by complainants as 625 miles. Complainant in No. 16670 (Sub-No. 7) showed only seven shipments from Colorado to Gallup since March 31, 1923, six from Swink, and one from Rocky Ford.

The rates herein prescribed under section 1 will remove any undue prejudice which may exist in the rates assailed, and no findings with respect to the allegations under section 3 are necessary.

The evidence shows that all of the complainants, except the C. N. Cotton Company, made or received shipments of sugar as described, and paid and bore the charges thereon.

Defendants call attention to the fact that in our original report in No. 14449 we awarded reparation on shipments which moved to Phoenix on a rate 0.5 cent less than the rate prescribed as reasonable by us from and to the same points in *Phoenix Chamber of Com-* (180) *merce* v. *Di-*

140 I. C. C. [165]

rector General, supra, referred to as the first Phoenix case, and that the period of reparation in the former case extended back approximately four months prior to the date when the latter case was decided. Defendants contend that they should not be required to pay reparation on shipments which

moved under rates approved or prescribed by us. We have several times announced that the doctrine or *res adjudicata* is not applied by us. *Goss* v. *Director General,* 73 I. C. C. 649. We reserve the right, upon a more comprehensive record, to modify our previous findings, whether in the same or a previous case, upon matters directly in issue before us as to which it clearly appears that our previous findings would not accord substantial justice under the laws which we administer. We have such a case here. For the first time the record before us is comprehensive in the evidence which it contains bearing upon the reasonableness of the rates assailed. Upon this record we reach the conclusion that the rate prescribed in the first Phoenix case, during the period embraced in these complaints, was unreasonable and that a lower rate would have been reasonable during that period. If we are within our authority in finding that a lower rate would have been reasonable, then it must follow that shippers who paid the freight charges at the higher rate paid charges which were unreasonable, and are entitled to reparation upon adequate proof that they paid or bore such charges.

We find that the assailed rate, minimum 60,000 pounds, from Holly and other Santa Fe points in Colorado grouped therewith to Gallup was, is, and will be unreasonable to the extent that it exceeded, exceeds, or may exceed 72 cents. We further find that the assailed rates, minimum 60,000 pounds, from California points were, are, and will be unreasonable to the extent that they exceeded, exceed,

or may exceed, respectively, the following, in cents per 100 pounds:

Prior to July 1, 1922, to Phoenix 79 cents from the southern California group and 81 cents from the northern California group and to Bowie 83 cents from the southern California group and 93 cents from the northern California group; on and between July 1, 1922, and the effective date of the rates herein prescribed for the future, from the southern California group and the northern California group, respectively, 66 and 66 cents to Yuma, 68 and 69 cents to Kingman, 71 and 73 cents to Phoenix, 73 and 77 cents to Prescott, Williams, Tucson, Flagstaff, and Clarkdale, 75 and 84 cents to Winslow, Holbrook, Bisbee, Bowie, and Douglass, 77 and 87 cents to Safford, and 79 and 89 cents to Gallup, Clifton, and Globe; and for the future as follows:

(181)

To—	From southern California group	From northern California group	To—	From southern California group	From northern California group
	Cents	*Cents*		*Cents*	*Cents*
Yuma, Ariz.	46	66	Bisbee, Ariz.	72	
Kingman, Ariz.	57	69	Bowie, Ariz.	72	
Phoenix, Ariz.	61	73	Douglas, Ariz.	72	
Tucson, Ariz.	65	77	Holbrook, Ariz.	72	
Prescott, Ariz.	65	77	Safford, Ariz.	75	
Williams, Ariz.	65	77	Gallup, N. Mex.	79	
Flagstaff, Ariz.	65	77	Clifton, Ariz.	79	
Clarkdale, Ariz.	65	77	Globe, Ariz.	79	
Winslow, Ariz.	73	84			

We further find that complainants, except the C. N. Cotton Company, made shipments as described at the rates herein found to have been unreasonable; that they paid and bore the charges thereon and were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found to have been reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice. No reparation orders have been issued in Nos. 14449 and 14140, and complainants in those cases should submit to the carriers new statements in compliance with Rule V referred to.

Our original order in No. 14449 and the order of division 3 in No. 14140 will be modified in conformity with the foregoing conclusions, and appropriate orders for the future will be entered in other cases disposed of in this report.

TAYLOR, *Commissioner*, concurring in part:

I dissent from so much of this report as finds the rates unreasonable in the past and awards reparation.

Commissioner PORTER did not participate in the disposition of this case.

ORDERS

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of March, A. D. 1928

No. 16770

Bashford-Burmister Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 1)

Central Commercial Company

v.

Same

No. 16770 (Sub-No. 2)

Wheeler Perry Company

v.

Santa Maria Valley Railroad Company and Southern Pacific Company

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No. 16770 (Sub-No. 3)

T. F. Miller Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 4)

E. F. Sanguinetti

v.

Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

(I) [168]

No. 16770 (Sub-No. 5)

Arizona Grocery Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 6)

Arizona Wholesale Grocery Company

v.

Arizona Eastern Railroad Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

No. 16770 (Sub-No. 7)

C. N. Cotton Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Pacific Electric Railway Company; Rio Grande, El Paso and Santa Fe Railroad Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

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No. 16670 (Sub-No. 8)

Babbitt Brothers Trading Company; Arizona Stores Company; Babbitt Brothers Company; and Babbitt Brothers

v.

Same

No. 16770 (Sub-No. 9)

Wm. H. Dagg Mercantile Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 17549

Phelps Dodge Mercantile Company

v.

The Atchison, Topeka & Santa Fe Railway Company; El Paso & Southwestern Railroad Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

(II) [169]

No. 17549 (Sub-No. 1)

Baffert & Leon

v.

The Atchison, Topeka & Santa Fe Railway Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

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No. 17466

United Verde Extension Mining Company

v.

Same

No. 17781

Simpson-Ashby Company

v.

Southern Pacific Company

These cases being at issue upon complaints, as amended, and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on

the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to points in Arizona, referred to in the next succeeding paragraph hereof, and to Gallup, N. Mex., and from points in Colorado, referred to in the second succeeding paragraph hereof, to Gallup, which shall exceed the rates hereinafter prescribed.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, from the following California groups, as defined in the report made a part hereof, to the Arizona and New Mexico destinations named below, rates, minimum weight 60,000 pounds, which shall not exceed the following, in cents per 100 pounds:

To—	From southern California group	From northern California group	To—	From southern California group	From northern California group
	Cents	*Cents*		*Cents*	*Cents*
Yuma, Ariz.	46	66	Bisbee, Ariz.	72	84
Kingman, Ariz.	57	69	Bowie, Ariz.	72	84
Phoenix, Ariz.	61	73	Douglas, Ariz.	72	84
Tucson, Ariz.	65	77	Holbrook, Ariz.	72	84
Prescott, Ariz.	65	77	Safford, Ariz.	75	87
Williams, Ariz.	65	77	Gallup, N. Mex.	79	89
Flagstaff, Ariz.	65	77	Clifton, Ariz.	79	89
Clarkdale, Ariz.	65	77	Globe, Ariz.	79	89
Winslow, Ariz.	72	84			

It is further ordered, That said defendants in No. 16670 (Sub-No. 7), according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, from Holly, Lamar, Rocky Ford, and Swink, Colo., and other points on the Atchison, Topeka & Santa Fe Railway in Colorado taking the same rates, to Gallup, N. Mex., a rate which shall not exceed 72 cents per 100 pounds, minimum weight 60,000 pounds.

And it is further ordered, That these orders shall continue in force until the further order of the commission.

SUPPLEMENTAL ORDERS

No. 14449

Traffic Bureau of the Phoenix Chamber of Commerce; Haas-Baruch & Company; Hall-Pollock Company; The Melczer Company; and James A. Dick Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Arizona Eastern Railroad Company

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No. 14140

Solomon-Wickersham Company

v.

Santa Maria Valley Railroad Company and Southern Pacific Company

These cases having been reopened for oral argument jointly with No. 16742, *Traffic Bureau of the Phoenix Chamber of Commerce et al.* v. *A., T. & S. F. Ry. Co. et al.*, and cases consolidated therewith, and such oral argument having been had, and the commission having, on the date hereof, made and filed a new report containing its find-

ings of fact and conclusions thereon, which said report, together with the previous reports herein, 95 I. C. C. 244 and 101 I. C. C. 667, are hereby referred to and made a part hereof:

It is ordered, That the order entered in No. 14449 on January 6, 1925, and the order entered in No. 14140 on July 17, 1925, be, and they are hereby, modified so that the second and third paragraphs thereof will read, respectively, as follows:

It is ordered, That the above-named defendants in No. 14449, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to Phoenix, Ariz., which shall exceed the rates prescribed in the next succeeding paragraph hereof.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, rates to Phoenix, Ariz., minimum weight 60,000 pounds, which shall not exceed 61 cents per 100 pounds from points in the southern California group, as defined in the report of this date made a part hereof, and 73 cents per 100 pounds from points

in the northern California group, as defined in the said report.

It is ordered, That the above-named defendants in No. 14140, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to Bowie, Ariz., which shall exceed the rates prescribed in the next succeeding paragraph hereof.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, rates to Bowie, Ariz., minimum weight 60,000 pounds, which shall not exceed 72 cents per 100 pounds from the southern California group, as defined in the report of this date made a part hereof, and 84 cents per 100 pounds from the northern California group, as defined in the said report.

And it is further ordered, That these supplemental orders shall continue in force until the further order of the commission.

By the commission.

[Seal] GEORGE B. McGINTY,
Secretary.

(V)

U. S. Government Printing Office: 1928 [172]

Said list of shipments hereinbefore set forth shows in detail, as previously stated, the charges actually assessed upon plaintiff's shipments involved in these causes, in accordance with the tariffs duly published and in effect at the dates of movement, and the charges which would have accrued thereon, upon the basis of the rates declared by said Commission in said last-mentioned report and order to have been the reasonable rates to have been applied at said dates of movement, together with the differences between the charges so assessed and those which would have accrued, which said last-mentioned differences constitute the amounts herein claimed by the plaintiff, exclusive of interest and fees of its attorneys and counsel.

9. Heretofore, and on the 11th day of March, 1929, the Interstate Commerce Commission duly made and rendered its supplemental order in said Docket No. 16742, and cases consolidated therewith, ordering and directing the defendants to pay unto the plaintiff the following sums, to wit:

Southern Pacific Company	2104.50
Southern Pacific Company and Santa Maria Valley Railroad Company	359.75
The Atchison, Topeka & Santa Fe Railway Company	2203.55
The Atchison, Topeka & Santa Fe Railway Company and Bay Transport Company	1251.02
The Atchison, Topeka & Santa Fe Railway Company and Southern Pacific Company	297.04

together with interest at the rate of 6 per cent per annum from the respective dates of the payment of the charges as shown on said list of shipments above set forth. Said last-mentioned order required the payment of said sums on or before April 26, 1929, and stated that the same were as reparation on account of unreasonable rates charged for the transportation of certain carload shipments of sugar from points in California to points in Arizona. Defendants have failed and [173] refused to comply with said order, or to pay said sums, or any part thereof, to the plaintiff, although demand and request therefor have heretofore been duly made by the plaintiff upon said defendants.

B. CONCLUSIONS OF LAW.

Based upon the foregoing findings of fact, the Court makes conclusions of law as follows:

1. That the rates and charges assessed and collected upon plaintiff's said shipments, as shown upon said list above set forth, were published and collected by authority of a formal continuing order of the Interstate Commerce Commission, and had previously been established and declared by said Commission to be not unreasonable, after formal investigation and/or were less in amount than rates which had been specifically prescribed and declared by said Commission to be not unreasonable after such formal investigation.

2. That said order of said Interstate Commerce Commission dated the 11th day of March, 1929, purporting to order and direct these defendants to

pay reparation to the plaintiff with respect to its said shipments hereinbefore listed, is null and void and of no effect, because said Commission was and is without lawful jurisdiction and authority under the Interstate Commerce Act to make said order, for the following reasons:

(a) Said Interstate Commerce Act does not vest said Commission with jurisdiction and authority to award reparation with respect to charges collected upon the basis of rates which said Commission has theretofore specifically prescribed or approved as reasonable and just for the future by a formal continuing order, or with respect to charges collected upon the basis of rates which are less in amount than rates so prescribed and/or approved as just and reasonable. [174]

(b) If said Act were so construed as to confer such jurisdiction and authority upon said Commission, it would to that extent be unconstitutional, and any and all orders made in pursuance of said purported jurisdiction would likewise be unconstitutional and void, because contrary to and forbidden by the Fifth Amendment to the United States Constitution, and particularly those portions of said Amendment which guarantee that no person shall be deprived of property without due process of law.

3. That plaintiff has failed to establish by the evidence any cause of action whatever against the defendants, or any of them, and has failed to establish that any unreasonable or unlawful rate or charge was collected upon any of its said ship-

ments, or that any reparation whatsoever is due or payable with respect to said shipments, or any of them.

4. That the plaintiff is not entitled to recovery any amount whatsoever as and for fees of its attorneys and counsel in these causes.

5. That the defendants are entitled to judgment against the plaintiff, that the plaintiff take nothing by its causes of action, or either of them, and that the complainants herein be dismissed.

WHEREFORE, defendants pray that the Court render and enter judgment in their favor in each of the causes above named in accordance herewith.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants.

E. W. CAMP,
JAMES E. LYONS,
A. BURTON MASON,
Of Counsel.

Dated: Phoenix, Arizona, July 8th, 1930. [175]

Endorsement on foregoing special findings of fact and conclusions of law requested by defendants:

Copy received July 8, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiffs.

Filed Jul. 8, 1930. [176]

[Title of Court and Cause—Nos. L.–695, L.–696—Phoenix.]

DEFENDANTS' EXCEPTIONS AND OBJECTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUESTED BY PLAINTIFF.

Now come the defendants in the above-entitled causes, and except and object to the findings of fact and conclusions of law proposed and requested by the plaintiff in said causes, as follows, to wit:

1. Defendants except and object to the findings proposed in the preamble to plaintiff's proposed findings of fact in cause No. L.–695, upon the ground that the same are not sustained by the record herein, and are contrary to the record and the law, and upon the further ground that the same are not sufficiently clear or definite; and defendants request that paragraphs 1 and 2 of the special findings of fact requested by defendants, and filed herewith, be substituted therefor. [177]

Defendants further except and object to the findings proposed in the preamble to plaintiff's proposed findings of fact in cause No. L.–696, on the ground that the same are not sustained by the record herein, and are contrary to the record and to the law, and upon the further ground that the same are not sufficiently clear and definite; and defendants request that paragraphs 1 and 2 of the special findings of fact requested by defendants, and filed herewith, be substituted therefor.

2. Defendants except and object to the findings proposed in paragraph 2 of plaintiff's proposed findings of fact in cause No. L.–695, and in paragraph 2 of plaintiff's proposed findings of fact in cause L.–696, upon the ground that the same are not sustained by the evidence, and are contrary to the evidence and the law, and upon the further ground that the same are not sufficiently clear and definite; and defendants request that paragraph 4 of the special findings of fact requested by the defendants, and filed herewith, be substituted therefor.

3. Defendants except and object to the findings proposed in paragraphs 3, 4, 5, and 6 of plaintiff's proposed findings of fact in cause No. L.–695, and in paragraphs 3, 4, 5, and 6, of plaintiff's proposed findings of fact in cause No. L.–696, upon the ground that the same are not sustained by the evidence, and are contrary to the evidence and the law, and upon the further ground that the same are not sufficiently clear and definite; and in particular, defendants except and object to the following:

(a) To the proposed finding in each of said causes reading as follows:

> "And that said freight charges as above set forth, per 100 lbs., were and are unreasonable to the plaintiff and in violation of the Interstate Commerce Act of February 4, 1887, and the acts of Congress amendatory thereto," [178] contained in paragraph 4 of plaintiff's proposed findings of fact in each of said causes upon the ground and for the reason that said finding is not proper, and is not sustained or supported by the

evidence, and is contrary to the evidence and the law.

(b) To the proposed finding, contained in paragraph 4 of plaintiff's proposed findings of fact in cause No.L.–695, reading as follows:

> "That the just and reasonable freight rate which should have been charged on all of said shipments from said points of origin in California to said point of destination in Arizona after the 1st day of July, 1922, and up to and including the 10th day of February, 1925, of 73 cents per 100 lbs."

upon the ground and for the reason that said finding is not proper, and is not sustained or supported by the evidence, and is contrary to the evidence and to the law.

(c) To the proposed finding, contained in paragraph 4 of plaintiff's proposed findings of fact in cause No. L.–695, reading as follows:

> "That the just and reasonable freight rate which should have been charged on all of said shipments from Crockett, California, and San Francisco, California, to said point of destination, to-wit: Phoenix, Arizona, after the date of July 1, 1922, and up to and including the 5th day of February, 1925, of 73 cents per 100 lbs.; and on all of said shipments from Oxnard and Betteravia, California, to said point of destination, to-wit: Phoenix, Arizona, after the 1st day of July 1922, and up to and including the 5th day of February, 1925, of 71 cents per 100 lbs.,"

upon the ground and for the reason that said finding is not proper, and is not sustained or supported by the evidence, and is contrary to the evidence and the law; and defendants request that paragraphs 5, 6, 7 and 8, of the special findings of fact requested by defendants, and filed herewith, be substituted for said paragraphs 3, 4, 5, and 6, of plaintiff's proposed findings of fact in each of said causes.

4. Defendants except and object to the findings proposed in [179] paragraphs 7 and 8 of plaintiff's proposed findings of fact in cause No. L.–695, and in paragraphs 7 and 8 of plaintiff's proposed findings of fact in cause No. L.–696, upon the ground that the same are not sustained by the evidence, and are contrary to the evidence and the law, and upon the further ground that the same are not sufficiently clear and definite; and defendants request that paragraph 9 of the special findings of fact requested by defendants, and filed herewith, be substituted therefor.

5. Defendants except and object to the following proposed finding, to wit:

> "That by reason of said unreasonable rates and charges, and the payment thereof by the plaintiff, and by reason of the refusal of the defendants to pay said reparation so awarded by the Interstate Commerce Commission, plaintiff is damaged in the sum of $3751.61, together with interest thereon at the rate of 6% per annum, from the respective dates of payment,"

contained in paragraph 9 of plaintiff's proposed findings of fact in cause No. L.–695, upon the

ground and for the reason that said finding is not proper, and is not sustained or supported by the evidence, and is contrary to the evidence and to the law.

6. Defendants except and object to the following proposed finding, to wit:

> "That by reason of said unreasonable rates and charges and payment thereof by the plaintiff, and by reason of the refusal of defendants to pay said reparation so awarded by the Interstate Commerce Commission, plaintiff is damaged in the total sum of $3464.33, together with interest thereon at the rate of 6% per annum from the respective dates of payment,"

contained in paragraph 9 of plaintiff's proposed findings of fact in Cause No. L.–696, upon the ground and for the reason that said finding is not proper, and is not supported or sustained by the evidence, and is contrary to the evidence and the law.

7. Defendants except and object to the findings proposed in paragraph 10 of plaintiff's proposed findings of facts in cause No. L.–695, and in paragraph 10 of plaintiff's proposed findings of fact [180] in cause No. L.–696, upon the ground that the same are not sustained by the evidence, and are contrary to the evidence and the law.

8. Defendants except and object to the following proposed finding:

> "That on the 11th day of March, 1929, the Interstate Commerce Commission duly made and published its order directing and requiring

the defendants herein to pay to the plaintiff the following sums, to-wit: Atchison, Topeka & Santa Fe Railway Company, $2203.55; Atchison, Topeka & Santa Fe Railway Company and Bay Shore Transport Company, $1521.02; Atchison, Topeka & Santa Fe Railway Company and Southern Pacific Company, $297.04,"

contained in paragraph 7 of plaintiff's proposed finding of facts in cause No. L.–695, upon the ground and for the reason that said finding is not proper, and is not sustained or supported by the evidence, and is contrary to the evidence and the law; this exception and objection being particularly directed to the proposed finding that $1521.02 is ordered and directed to be paid to the plaintiff by defendants, The Atchison, Topeka & Santa Fe Railway and Bay Shore Transport Company inasmuch as the complaint, in cause No. L.–695, the agreed statement of facts, and Exhibit "A," introduced by the plaintiff upon the trial hereof, show that said amount ordered and directed to be paid by said last-mentioned defendants is not more than $1251.02.

9. Defendants except and object to the conclusions proposed in paragraph 1 of the conclusions of law requested and proposed by the plaintiff in cause No. L.–695, and in paragraph 1 of the conclusions of law requested and proposed by plaintiff in cause No. L.–696, upon the ground and for the reason that the same are not sustained by the evidence or the law, and are contrary to the evidence and the law.

10. Defendants except and object to the conclusions proposed in paragraph 2 of the conclusions of law proposed and requested by plaintiff in cause No. L.–695, and in paragraph 2 of the conclusions of law proposed and requested by plaintiff in cause No. L.–696, upon [181] the ground and for the reason that the same are not sustained by the evidence or the law, and are contrary to the evidence and the law.

11. Defendants except and object to the conclusions proposed in paragraph 3 of the conclusions of law proposed and requested by plaintiff in cause No. L.–695, and in paragraph 3 of the conclusions of law proposed and requested by plaintiff in cause No. L.–696, upon the ground and for the reason that the same are not sustained by the evidence or the law, and are contrary to the evidence and the law.

12. Defendants except and object to any judgment whatever being rendered or entered in favor of the plaintiff in either of the above-entitled causes.

WHEREFORE, defendants pray that the findings of fact and conclusions of law proposed and requested by plaintiff and herein excepted and objected to, be refused and rejected, and that in lieu thereof, the court do find special findings of fact and conclusions of law as requested by the defendants, which said special findings of fact and conclusions of law requested by defendants are herewith filed and presented to the Court; and that the Court do render and enter judgment in both of the

above-entitled causes, in favor of the defendants, and against the plaintiff.

Dated this 8th day of July, 1930.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Phoenix, Arizona,
Attorneys for Defendants.

E. W. CAMP,
JAMES E. LYONS,
A. BURTON MASON,
65 Market Street,
San Francisco, Calif.,
Of Counsel. [182]

Endorsement on foregoing defendants' exceptions and objections to findings of fact and conclusions of law requested by plaintiff:

Copy received July 8, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiffs.

Filed Jul. 8, 1930. [183]

[Title of Court and Cause—Nos. L.-695, L.-696—Phoenix.]

STIPULATION FOR CONSOLIDATION OF RECORD.

IT IS HEREBY STIPULATED AND AGREED by and between counsel for plaintiff above named, and counsel for the defendants above named, that, whereas, the above-entitled cases were

consolidated for the purpose of trial, and all agreed statement of facts and all evidence taken at the trial was applicable to both cases, and as the defendants above named propose to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit:

NOW, THEREFORE, IT IS STIPULATED AND AGREED that the records in the above two cases shall be consolidated for the purpose of appeal to the United States Circuit Court of Appeals for the Ninth Circuit and for the purpose of review by said Circuit Court of Appeals, or any other appellate court, and that both of the above cases shall be reviewed upon such consolidated record.

IT IS STIPULATED that for the purpose of review of both of said cases it is sufficient that one set of agreed statement [184] of facts, and one set of requested findings of fact and conclusions of law by each of the parties, and one set of findings of fact and conclusions of law by the Court, and one set of exceptions and objections to findings of fact and conclusions of law by each of the parties, if desired to be made, and one bill of exceptions, if necessary, and one set of all exhibits, and one set of assignments of error, may be filed, which shall be deemed to apply to both of said cases, and it shall not be necessary to file separate documents above named in each of said cases.

Dated this 9th day of July, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiff.
BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants.

Filed Jul. 11, 1930. [185]

[Title of Court and Cause—Nos. L.-695, L.-696—Phoenix.]

ORDER FOR CONSOLIDATION OF RECORD.

In accordance with stipulation of counsel, IT IS HEREBY ORDERED that the records in the above two cases shall be consolidated for the purposes of appeal in the United States Circuit Court of Appeals for the Ninth Circuit, and for the purpose of review by said United States Circuit Court of Appeals, or any other Appellate Court, and for such purpose it is sufficient that one set of agreed statement of facts, and one set of requested findings of fact and conclusions of law by each of the parties, and one set of findings of fact and conclusions of law by the Court, and one set of exceptions and objections to proposed findings of fact and conclusions of law by each of the parties, if desired to be made, and one bill of exceptions, if necessary, and one set of all exhibits, and one set of assignments of error, be filed, which shall be marked filed in Cause No. L.-695—Phoenix above named, and which shall be deemed to apply to both of said

cases; and that hereafter all orders and papers filed shall be filed in said Cause No. L.–695—Phoenix, [186] and shall be deemed to apply to both cases.

Dated this 11th day of July, 1930.

F. C. JACOBS,
District Judge.

Filed Jul. 11, 1930. [187]

In the United States District Court, for the District of Arizona.

April, 1930, Term—July 15, 1930—At Phoenix.

Hon. F. C. JACOBS, United States District Judge, Presiding.

No. L.–695—PHOENIX.

AT LAW.

ARIZONA GROCERY COMPANY, a Corporation,
Plaintiff,

vs.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a Corporation, BAY TRANSPORT COMPANY, a Corporation, and SOUTHERN PACIFIC COMPANY, a Corporation,

Defendants.

JUDGMENT.

This cause having come on regularly to be heard the 8th day of January, 1930; Elliott and Snell having appeared as counsel for the plaintiff, Ari-

zona Grocery Company, Baker and Whitney, Chalmers, Fennemore and Nairn, E. W. Camp, James E. Lyons and James Burton Mason having appeared as counsel for the defendants, Atchison, Topeka & Santa Fe Railway Company, Bay Transport Company, and Southern Pacific Company; and it having appeared that a stipulation containing an express waiver of the right to trial by jury had been signed by all of the parties and filed herein;

And a stipulation as to the facts having been filed in open court, same being designated as "Agreed Statement of Facts" and dated the 8th day of January, 1930, and signed by all of the parties by their respective counsel and further evidence having been introduced in accordance with the "Agreed Statement of Facts," and both sides having rested and said cause having been argued on behalf of the plaintiff and on behalf of the defendants, and the Court having requested the plaintiff and the defendants to file authorities and briefs on the matters and questions involved and said cause having been submitted to the Court for its consideration and decision; [202]

And on the 23d day of June, 1930, the Court having heard evidence and testimony as to the reasonableness of attorneys' fees to be allowed the plaintiff herein for the services rendered by its attorneys in the trial and determination hereof to the date of this judgment as provided by law;

And on the 15th day of July, 1930, findings of fact and conclusions of law having been filed by the Court herein as requested by the parties hereto and the Court having ordered that in accordance with

said findings of fact and conclusions of law, judgment be entered in favor of the plaintiff and against the defendant in said cause filed herein, together with costs of plaintiff incurred herein,—

NOW, THEREFORE, by virtue of the law and by reason of the premises aforesaid, IT IS ORDERED AND ADJUDGED AND DECREED that the defendants and each of them are indebted to the plaintiff in the principal sum of $3,751.61, together with interest thereon in the amount of $1,444.14, together with plaintiff's costs herein taxed at $1,064.94 of which $1,039.19 is adjudged by the Court to be reasonable attorneys' fees to be allowed the plaintiff for services rendered by its attorney in this matter up to the date of this judgment as provided by law; all of said above amounts to bear interest at the rate of 6 per cent per annum until paid.

Approved as to form, but not as to substance or amounts.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants. [203]

In the United States District Court for the District of Arizona.

April, 1930, Term—July 15, 1930—At Phoenix.

Honorable F. C. JACOBS, United States District Judge, Presiding.

No. L.-696—PHOENIX.

AT LAW.

ARIZONA GROCERY COMPANY, a Corporation,
Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation, and SANTA MARIA VALLEY RAILROAD COMPANY, a Corporation,
Defendants.

JUDGMENT.

This cause having come on regularly to be heard the 8th day of January, 1930; Elliott and Snell having appeared as counsel for the plaintiff, Arizona Grocery Company, Baker and Whitney, Chalmers, Fennemore and Nairn, E. W. Camp, James E. Lyons and James Burton Mason having appeared as counsel for the defendants, Southern Pacific Company and Santa Maria Valley Railroad Company; and it having appeared that a stipulation containing an express waiver of the right to trial by jury had been signed by all of the parties and filed herein;

And a stipulation as to the facts having been filed in open court, same being designated as

"Agreed Statement of Facts" and dated the 8th day of January, 1930, and signed by all of the parties by their respective counsel and further evidence having been introduced in accordance with the "Agreed Statement of Facts," and both sides having rested, and said cause having been argued on behalf of the plaintiff and on behalf of the defendants, and the Court having requested the plaintiff and the defendants to file authorities and briefs on the matters and questions involved and said cause having been submitted to the Court for its consideration and decision; [204]

And on the 23d day of June, 1930, the Court having heard evidence and testimony as to the reasonableness of attorneys' fees to be allowed the plaintiff herein for the services rendered by its attorneys in the trial and determination hereof to the date of this judgment as provided by law;

And on the 15th day of July, 1930, findings of fact and conclusions of law having been filed by the Court herein as requested by the parties hereto, and the Court having ordered that in accordance with said findings of fact and conclusions of law, judgment be entered in favor of the plaintiff and against the defendant in said cause filed herein, together with costs of plaintiff incurred herein;

NOW, THEREFORE, by virtue of the law and by reason of the premises aforesaid, IT IS ORDERED, ADJUDGED AND DECREED that the defendants and each of them are indebted to the plaintiff in the principal sum of $2,464.33, together with interest thereon in the amount of $933.91, together with plaintiff's costs herein taxed

at $685.60 of which $675.60 is adjudged by the Court to be reasonable attorneys' fees to be allowed the plaintiff for services rendered by its attorney in this matter up to the date of this judgment as provided by law; all of said above amounts to bear interest at the rate of 6 per cent per annum until paid.

Approved as to form, but not as to substance or amounts.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants. [205]

[Title of Court and Cause—No. L.-695—Phoenix.]

NOTICE OF APPLICATION TO TAX COSTS.

To the Clerk of Said Court and Baker and Whitney, Chalmers, Fennemore and Nairn, E. W. Camp, James E. Lyons and James Burton Mason, Attorneys for Defendants:

Please take notice that the attorneys for the plaintiff will on the 17 day of July, 1930, at 10:00 o'clock A. M. make application to the Clerk of the court, at his office, to tax the costs incurred in said action, as provided by law; and that a memorandum of the costs and necessary disbursements in said action is attached hereto and made a part of this notice.

Dated this 15 day of July, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiff. [206]

[Title of Court and Cause—No. L.-695—Phoenix.]

STATEMENT OF COSTS.

To the Clerk of said Court and Baker and Whitney, Chalmers, Fennemore and Nairn, E. W. Camp, James E. Lyons and James Burton Mason, Attorneys for Defendants:

You and each of you are hereby notified that the plaintiff, Arizona Grocery Company, claims as costs in the above-entitled cause the sum of $1064.94 for the following expenses incurred by it, viz.:

Clerk's Fees	$ 10.00
U. S. Marshal Fees	$ 15.75
Attorneys Fees as allowed by Court	$1039.19
Total	$1064.94

Plaintiff's costs $1064.94 taxed and entered this 17th day of July, 1930.

C. R. McFALL,
Clerk.
By H. F. Schlittler,
Deputy Clerk. [207]

State of Arizona,
County of Maricopa,—ss.

Frank L. Snell, Jr., being first duly sworn, on oath deposes and says:

That he is one of the attorneys for the plaintiff Arizona Grocery Company in the above-entitled cause and as said attorney is better informed as to its costs expended in the above-entitled cause than the said plaintiff; that the above items are correct,

and that the disbursements above set forth have been necessarily incurred in the above action, and that said amounts hereinabove listed have been expended or incurred for the plaintiff in said cause.

FRANK L. SNELL, Jr.

Subscribed and sworn to before me this 14th day of July, 1930.

My commission as notary public expires June 17, 1930.

[Seal] MARY CAVANAUGH,
Notary Public in and for Maricopa County, State of Arizona.

Received copy this 15th day of July, 1930.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants.

Filed Jul. 15, 1930. [208]

[Title of Court and Cause—No. L.-696—Phoenix.]

NOTICE OF APPLICATION TO TAX COSTS.

To the Clerk of said Court and Baker and Whitney, Chalmers, Fennemore and Nairn, E. W. Camp, James E. Lyons and James Burton Mason, Attorneys for Defendants:

Please take notice that the attorneys for the plaintiff will on the 17th day of July, 1930, at 10:00 o'clock A. M. make application to the Clerk of the court, at his office, to tax the costs incurred in said

action, as provided by law; and that a memorandum of the costs and necessary disbursements in said action is attached hereto and made a part of this notice.

Dated this 15 day of July, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiff. [209]

[Title of Court and Cause—No. L.-696—Phoenix.]

STATEMENT OF COSTS.

To the Clerk of the Said Court and Baker and Whitney, Chalmers, Fennemore and Nairn, E. W. Camp, James E. Lyons and James Burton Mason, Attorneys for Defendants.

You and each of you are hereby notified that the plaintiff, Arizona Grocery Company, claims as costs in the above-entitled cause the sum of $685.60 for the following expenses incurred by it, viz.:

Clerk's Fees	$ 10.00
Sheriff's Fees	$ —
Attorney's Fees as allowed by Court	$675.60
Total	$685.60

Plaintiff's costs $685.60 taxed and entered this 17th day of July, 1930.

C. R. McFALL,
Clerk.
By H. F. Schlittler,
Deputy Clerk. [210]

State of Arizona,
County of Maricopa,—ss.

Frank L. Snell, Jr., being first duly sworn, on oath deposes and says: That he is one of the attorneys for the plaintiff Arizona Grocery Company in the above-entitled cause and as said attorney is better informed as to its costs expended in the above-entitled cause that the said plaintiff; that the above items are correct, and that the disbursements above set forth have been necessarily incurred in the above action, and that said amounts hereinabove listed have been expended or incurred for the plaintiff in said cause.

FRANK L. SNELL, Jr.

Subscribed and sworn to before me this 14 day of July, 1930.

My commission as notary public expires June 17, 1931.

[Seal] MARY CAVANAUGH,
Notary Public in and for Maricopa County, State of Arizona.

Received copy this 15th day of July, 1930.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants.

Filed Jul. 15, 1930. [211]

[Title of Court and Cause—No. L.-695—Phoenix.]

OBJECTIONS AND EXCEPTIONS TO PLAINTIFF'S STATEMENT OF COSTS.

Now come defendants above named by their attorneys of record and object and except to the following item contained in plaintiff's statement of costs, to wit:

"Attorneys' Fees as allowed by Court .....$1039.19"

upon the grounds and for the reasons that the same is not justified and is not a proper item of cost.

Dated this 17th day of July, 1930.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
E. W. CAMP,
JAMES E. LYON,
A. BURTON MASON,
Attorneys for Defendants.

Receipt of copy is hereby acknowledged this 16 day of July, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiff.

Filed July 17, 1930. [212]

[Title of Court and Cause—No. L.-696—Phoenix.]

OBJECTIONS AND EXCEPTIONS TO PLAINTIFF'S STATEMENT OF COSTS.

Now come defendants above named by their attorneys of record and object to the following item contained in plaintiff's statement of costs, to wit:

"Attorneys' Fees as allowed by Court ..... $675.60"

upon the grounds and for the reasons that the same is not justified and is not a proper item of cost.

Dated this 17th day of July, 1930.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
E. W. CAMP,
JAMES E. LYON,
A. BURTON MASON,
Attorneys for Defendants.

Receipt of copy is hereby acknowledged this 16 day of July, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiff.

Filed July 17, 1930. [213]

United States District Court for the District of Arizona.

October, 1929, Term at Phoenix.

Honorable F. C. JACOBS, United States District Judge Presiding.

Minute Entry of Monday—November 18, 1930.

L.–695.

ARIZONA GROCERY COMPANY, a Corporation,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation, BAY TRANSPORT COMPANY, a Corporation, and SOUTHERN PACIFIC COMPANY, a Corporation,

Defendants.

L.–969.

ARIZONA GROCERY COMPANY, a Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation and SANTA MARIA VALLEY RAILROAD COMPANY, a Corporation,

Defendants.

ORDER CONTINUING TIME TO ANSWER TO AND INCLUDING NOVEMBER 25, 1929.

L.–695.

IT IS ORDERED that defendant's time within which to further plead or answer herein be and the same is hereby continued to November 25, 1929, in accordance with the stipulation heretofore filed herein.

L.–696.

IT IS ORDERED that defendant's time within which to further plead or answer herein be and the same is hereby continued to November 25, 1929, in accordance with the stipulation heretofore filed herein. [214]

MINUTE ENTRY OF MONDAY, DECEMBER 2, 1929—ORDER THAT DEMURRER BE STRICKEN FROM LAW AND MOTION CALENDAR.

L.–695.

Defendants' demurrer comes on regularly for hearing this day; no counsel appears for the plaintiff. Alex B. Baker, Esq., appears as counsel for the defendant. Upon motion of said counsel,—

IT IS ORDERED that said demurrer be stricken from the law and motion calendar and continued to be reset upon motion of counsel and order of the Court.

L.–696.

Defendant's demurrer comes on regularly for hearing this day. No counsel appears for the plaintiff. Alex. B. Baker, Esq., appears as counsel for the defendant. Upon motion of said counsel,—

IT IS ORDERED that said demurrer be stricken from the law and motion calendar and continued to be reset upon motion of counsel and order of the Court.

MINUTE ENTRY OF SATURDAY, DECEMBER 21, 1929—ORDER THAT DEMURRER AND AGREED STATEMENT OF FACTS BE SET FOR HEARING JANUARY 8, 1930.

L.–696.

No counsel appears for the plaintiff herein. A. B. Baker, Esq., appears as counsel for the defendant. On motion of counsel for the defendant,—

IT IS ORDERED that the defendant's demurrer and agreed statement of facts be set for hearing January 8, 1930, at ten o'clock, A. M.

L.–695.

No counsel appears for the plaintiff herein. A. B. Baker, Esq., appears as counsel for the defendant. On motion of counsel for the defendant,—

IT IS ORDERED that the defendant's demurrer and agreed statement of facts be set for hearing January 8, 1930, at ten o'clock, A. M.

MINUTE ENTRY OF JANUARY 8, 1930—ORDER CONSOLIDATING CASES, ETC.

L.-695—L.-696.

Defendants' demurrers and agreed statement of facts come on regularly this day for hearing in each of these cases. Frank L. Snell, Esq., appears as counsel for the plaintiff, T. G. Nairn, Esq., appears as counsel for the defendant, Atchison, Topeka and Santa Fe Railway Company. A. B. Baker Esq., A. B. Mason, Esq., and J. E. Lyons, Esq., appear as counsel for the defendants Southern Pacific Company.

IT IS ORDERED that these cases be and the same are hereby consolidated and that a jury be waived upon the trial [215] hereof in accordance with the stipulation of the parties heretofore filed herein. Upon motion of counsel for the defendants,—

IT IS ORDERED that defendants' demurrer in each of these cases be and the same is hereby withdrawn. Thereupon, it is further stipulated that the record as made upon the agreed statement of facts be submitted for the Court's decision, and the following exhibits are now admitted in evidence on behalf of the plaintiff, in accordance with said stipulation.

A—Order 16742—Interstate Commerce Commission.

B—Claim 805-1—Arizona Grocery Company.

C—Claim 806-2—Arizona Grocery Company.

Thereupon, argument is now duly had by respective counsel upon said record.

The plaintiff herein now moves for judgment on said record and thereupon the defendants and each of them, move for a dismissal of these actions, and

IT IS ORDERED that said matter be submitted and taken under advisement.

IT IS FURTHER ORDERED that the plaintiff be allowed thirty days from and after this date to file brief; that the defendants be and they are hereby allowed thirty days thereafter to file reply brief and that the plaintiffs be allowed fifteen days from and after time allowed the defendants within which to file their answer to said reply brief.

MINUTE ENTRY OF THURSDAY, MARCH 27, 1930—ORDER EXTENDING TIME TO AND INCLUDING APRIL 8, 1930, TO FILE REPLY BRIEF.

L.-695.—L.-696.

IT IS ORDERED that plaintiff's time within which to file reply brief be extended to and including April 8, 1930, in accordance with the stipulation of the parties heretofore filed in each of these cases.

April, 1930, Term—At Phoenix.

MINUTE ENTRY OF MONDAY, MAY 19, 1930—ORDER OVERRULING DEFENDANTS' DEMURRER.

L.-695.

The defendants' demurrer to the complaint, having heretofore been argued, submitted and by the

Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,—

IT IS ORDERED that said defendants' demurrer to the [216] complaint be, and the same is hereby, overruled.

IT IS FURTHER ORDERED that an exception on behalf of the defendants be entered.

L.–696.

The defendants' demurrer to the complaint, having heretofore been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,—

IT IS ORDERED that said defendants' demurrer to the complaint be, and the same is hereby, overruled.

IT IS FURTHER ORDERED that an exception on behalf of the defendants be entered.

MINUTE ENTRY OF WEDNESDAY, MAY 28, 1930—ORDER DENYING DEFENDANTS' MOTION TO DISMISS.

L.–695.–L.–696.

The defendants' motion to dismiss, having been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,—

IT IS ORDERED that said defendants' motion to dismiss be denied.

IT IS FURTHER ORDERED that an exception on behalf of each defendant be entered.

MINUTE ENTRY OF THURSDAY, JUNE 5, 1930—ORDER SETTING TIME FOR HEARING ON SETTLEMENT AND ALLOWANCE OF ATTORNEY'S FEES.

L.–695—L.–696.

On motion of F. L. Snell, Jr., Esquire, counsel for the plaintiff,—

IT IS ORDERED that hearing on settlement and allowance of attorney's fees be set for Monday, June 9, 1930, at the hour of ten o'clock A. M.

[217]

MINUTE ENTRY OF MONDAY, JUNE 9, 1930—ORDER CONTINUING HEARING ON SETTLEMENT AND ALLOWANCE OF ATTORNEY'S FEES.

L.–695—L.–696.

Hearing on settlement and allowance of attorney's fees come on regularly for this day. F. L. Snell, Jr., Esquire, appears for the plaintiff; A. E. Baker, Esquire, appears for the defendants. Upon stipulation of respective counsel—

IT IS ORDERED that hearing on settlement and allowance of attorney's fees be continued and set for Monday, June 23, 1930, at the hour of ten o'clock A. M.

MINUTE ENTRY OF MONDAY, JUNE 23, 1930 —HEARING ON SETTLEMENT AND ALLOWANCE OF ATTORNEY'S FEES.

L.-695—L.-696.

Settlement and allowance of attorney's fees comes on regularly for hearing this day. F. L. Snell, Jr., Esquire, appears for the plaintiff; T. G. Nairn, Esquire, appears as counsel for the defendant Atchison, Topeka and Santa Fe Railway Company; L. C. Whitney, Esquire, and A. B. Mason, Esquire, appear as counsel for the defendant Southern Pacific Company, and argument is now duly had by respective counsel.

F. L. Snell, Jr., and Samuel White are sworn and examined on behalf of the plaintiff.

A. B. Mason and T. G. Nairn are sworn and examined on behalf of the defendants.

Thereupon said matter is submitted to the Court and

IT IS ORDERED that the attorney's fees in each of these cases be settled and allowed in an amount equal to twenty per cent (20%) of principal and interest, to which rulings and orders of the Court the defendants except.

IT IS FURTHER ORDERED that the plaintiff herein prepare findings of fact and conclusions of law.

MINUTE ENTRY OF FRIDAY, JULY 11, 1930 —HEARING ON PLAINTIFF'S REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW, ETC.

L.-695—L.-696.

F. L. Snell, Jr., Esquire, appears for the plaintiff; A. B. Baker, Esquire, and A. B. Mason, Esquire, appear for the defendant Southern Pacific Company.

Plaintiff's request for findings of fact and conclusions of law and defendants' request for special findings of fact and conclusions of law and exceptions and objections to plaintiff's request for findings of fact and conclusions of law come on regularly this date for hearing. Argument is now had by respective counsel, and

IT IS ORDERED that Proposed Findings 1 and 2 of defendants be substituted and adopted for the preamble of plaintiff's findings; that Proposed Findings 3 and 4 of defendants be substituted and adopted for Proposed Findings 1 and 2 of the plaintiff; that Proposed Finding 5 of defendants be substituted for Proposed Finding 3 of the plaintiff. [218]

That the Proposed Finding No. 6 of the defendants is allowed and adopted as amended to which ruling and order of the Court the defendants except. Plaintiff excepts to the adoption by the Court of said defendants' proposed finding as amended.

That the Proposed Finding No. 7 of the defendants is allowed and adopted as amended to which ruling and order of the Court the defendants except. Plaintiff excepts to the adoption by the Court of said defendants' proposed finding as amended.

That the Proposed Finding No. 8 of the defendants is allowed and adopted as amended and said finding is substituted for plaintiff's Proposed Findings Nos. 5 and 6, to which ruling and order of the Court the defendants except.

That the Proposed Finding No. 9 of the defendants is allowed and adopted and is substituted for plaintiff's Proposed Findings Nos. 7 and 8.

That the Proposed Findings Nos. 4, 6, 9 and 10 of the plaintiff are allowed and adopted as amended to which ruling and order of the Court the defendants except.

IT IS FURTHER ORDERED

That Plaintiff's Conclusions of Law Nos. 1 and 2 be allowed and adopted, to which ruling and order of the Court the defendants except.

That Plaintiff's Conclusions of Law No. 3 be allowed and adopted as amended, to which ruling and order of the Court the defendants except.

IT IS FURTHER ORDERED that the conclusions of law as proposed by the defendants be and the same are hereby denied and that judgment in each case be entered in accordance with the findings of fact and conclusions of law as adopted to which rulings and order of the Court the defendants except.

Upon stipulation of counsel, IT IS ORDERED that the decision in each case may be deemed as rendered as of June 23, 1930, and that the proposed findings of fact and conclusions of law of both the plaintiff and the defendants have been submitted in accordance with the rules of this court and that said findings of fact and conclusions of law were settled in open court.

On motion of Alex B. Baker, counsel for defendant Southern Pacific Company, IT IS ORDERED that each of the defendants have a stay of execution of judgment for a period of sixty days from and after this date and that said defendants be allowed sixty days from and after this date within which to prepare, serve and file bill of exceptions. [219]

L.-695.

IT IS ORDERED that the supersedeas and cost bond in this case be fixed in the sum of $7,500.00.

L.-696.

IT IS ORDERED that the supersedeas and cost bond in this case be fixed in the sum of $6,500.00.

L.-695—L.-696.

Upon stipulation of counsel heretofore filed herein for the consolidation of these cases for the purpose of appeal, the following order is entered:

ORDER FOR CONSOLIDATION OF RECORD.

In accordance with stipulation of counsel, it is hereby ordered that the records in the above two cases shall be consolidated for the purposes of ap-

peal in the United States Circuit Court of Appeals for the Ninth Circuit, and for the purpose of review by said United States Circuit Court of Appeals, or any other appellate court, and for such purpose it is sufficient that one set of agreed statement of facts, and one set of requested findings of fact and conclusions of law by each of the parties, and one set of findings of fact and conclusions of law by the Court, and one set of exceptions and objections to proposed findings of fact and conclusions of law by each of the parties, if desired to be made, and one bill of exceptions, if necessary, and one set of all exhibits, and one set of assignments of error, be filed, which shall be marked filed in Cause No. L.–695—Phoenix above named, and which shall be deemed to apply to both of said cases; and that hereafter all orders and papers filed shall be filed in said Cause No. L.–695—Phoenix, and shall be deemed to apply to both cases.

Dated this 11th day of July, 1930.

F. C. JACOBS,
District Judge.

MINUTE ENTRY OF TUESDAY, JULY 15, 1930 —ORDER RE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

L.–695—L.–696.

F. L. Snell, Jr., Esquire, appears for the plaintiff; E. G. Nairn, Esquire, appears for the defendants, and

IT IS ORDERED that the findings of fact and conclusions of law be filed in each of these cases.

Thereupon the following judgments are entered. [220]

MINUTE ENTRY OF THURSDAY, JULY 17, 1930—ORDER OVERRULING OBJECTIONS TO RULING, ETC.

L.–695—L.–696.

F. L. Snell, Jr., Esquire, appears for the plaintiff; A. B. Baker, Esquire, appears for defendant Southern Pacific Company; T. G. Nairn, Esquire, appears for the defendant Atchison, Topeka & Santa Fe Railway Company.

Defendants' objections and exceptions to the ruling of the Clerk in allowing and taxing plaintiff's costs in each of these cases and particularly to the items of attorney's fees come on regularly for hearing this date. Argument is now had by respective counsel, and

IT IS ORDERED that said objections be overruled and that the costs in each of these cases be affirmed as allowed and taxed by the Clerk, to which order and ruling of the Court the defendants except.

MINUTE ENTRY OF MONDAY, AUGUST 25, 1930—ORDER EXTENDING TIME TO AND INCLUDING OCTOBER 7, 1930, TO FILE BILL OF EXCEPTIONS.

L.–695—L.–696.

On motion of A. B. Baker, Esquire, counsel for the defendant Southern Pacific Company,—

IT IS ORDERED that the time of the defendants in each of these cases within which to file bill of exceptions be extended to and including October 7, 1930.

IT IS FURTHER ORDERED that these cases be continued into the October, 1930, term to enable the Court to retain jurisdiction and control of each of these cases and to hear, consider, rule upon, settle and sign bill of exceptions, and to entertain, consider and rule upon any and all further proceedings in said cases.

MINUTE ENTRY OF TUESDAY, SEPTEMBER 29, 1930—ORDER ALLOWING APPEAL AND FIXING AMOUNT OF COST AND/OR SUPERSEDEAS BOND.

L.-695.

On this 24th day of September, 1930, came the defendants by their attorneys and filed herein, and presented to the Court their petition for the allowance of an appeal, and assignments of error intended to be urged by them, praying also that a duly authenticated transcript of the records, proceedings, and all papers and documents upon which the judgment herein was rendered may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and that citation issue; and further praying that this Court fix the amount of the costs and/or supersedeas bond to be given by the defendants in this cause; and that such other and further proceedings may be had as may be proper in the premises. [221].

NOW, THEREFORE, on consideration thereof, the Court does hereby allow the appeal as prayed for, and does hereby fix the amount of the costs and supersedeas bond in the sum of Seventy-five Hundred Dollars ($7,500.00), and does hereby order that such bond shall operate as a supersedeas bond.

Dated this 24th day of September, 1930.

F. C. JACOBS,
Judge of the United States District Court for the District of Arizona.

L.–696.

ORDER ALLOWING APPEAL AND FIXING AMOUNT OF COST AND/OR SUPERSEDEAS BOND.

On this 24th day of September, 1930, came the defendants by their attorneys and filed herein, and presented to the Court their petition for the allowance of an appeal, and assignments of error intended to be urged by them, praying also that a duly authenticated transcript of the records, proceedings, and all papers and documents upon which the judgment herein was rendered may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and that citation issue; and further praying that this Court fix the amount of the costs and/or supersedeas bond to be given by the defendants in this cause; and that such other and further proceedings may be had as may be proper in the premises.

NOW, THEREFORE, on consideration thereof *thereof* the Court does hereby allow the appeal as

prayed for and does hereby fix the amount of the costs and supersedeas bond in the sum of Sixty-five Hundred Dollars ($6,500.00), and does hereby order that such bond shall operate as a supersedeas bond.

Dated this 24th day of September, 1930.

F. C. JACOBS,
Judge of the United States District Court, for the District of Arizona.

L.–695.

ORDER APPROVING BOND ON APPEAL.

IT IS ORDERED BY THE COURT that the bond on appeal, executed September 24, 1930, in the sum of Seventy-five Hundred ($7,500.00) Dollars, with the Pacific Indemnity Company of California as surety thereon, and filed in this case September 29, 1930, be, and the same is hereby, accepted and approved. [222]

ORDER APPROVING BOND ON APPEAL.

L.–696.

IT IS ORDERED BY THE COURT that the bond on appeal, executed September 24, 1930, in the sum of Sixty-five Hundred ($6500.00) Dollars, with the Pacific Indemnity Company of California as surety thereon, and filed in this case September 29, 1930, be, and the same is hereby, accepted and approved.

L.– 695, L.–696.

ORDER TO SETTLE AND ALLOW BILL OF EXCEPTIONS.

IT IS ORDERED that the bill of exceptions heretofore filed herein be, and the same is hereby, settled and allowed. [223]

[Title of Court and Cause—Nos. L.–695, L.–696—Phoenix.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED that pursuant to the stipulations and agreed statement of facts as hereinafter recited, the above causes came on for hearing on the 8th day of January, 1930, before the Hon. F. C. Jacobs, one of the Judges of the United States District Court, in and for the District of Arizona, sitting without a jury, a jury having been expressly waived by written stipulations signed by counsel for plaintiff and defendants and filed in said causes. All of the parties appeared and announced ready for the hearing, the plaintiff appearing by its counsel Messrs, Elliott & Snell, of Phoenix, [224] Arizona, and the defendants appearing by their counsel Messrs. Baker & Whitney, and Messrs. Chalmers, Fennemore & Nairn, of Phoenix, Arizona, and Mr. A. Burton Mason and Mr. J. E. Lyons, of San Francisco, California.

And thereupon there were presented and filed in the above causes stipulations in writing signed by the attorneys for the plaintiff and the attorneys for the defendants agreeing that the above causes may be tried together and consolidating said causes for purposes of trial and hearing. Counsel for plaintiff and defendants did present and file in said causes a stipulation of agreed statement of facts, which said agreed statement of facts was in writing and signed by counsel for plaintiff and counsel for defendants and reads as follows:

(Title of Court and Cause—L.-695 and L.-696—Phoenix.)

IT IS HEREBY STIPULATED AND AGREED, by and between the parties to the above-entitled actions, and by and between their respective attorneys and counsel, that upon the trial, or any trial, retrial, appeal or other hearing of said causes, the facts hereinafter set forth in this agreed statement of facts shall be deemed to be true and to have been proven in the same manner as if duly established by competent testimony; subject, however, to the right of any party to introduce such further testimony not in conflict herewith as it may desire; subject, further, to the right of either party to object to any portion of this agreed statement of facts on the ground that the same is irrelevant and immaterial to the issues in said causes:

I.

Plaintiff now is, and at all times herein mentioned was, a corporation organized and existing

under the laws of the State of Arizona, and qualified to do business in said state. [225]

II.

Defendants Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company, and Santa Maria Valley Railroad Company now are, and at all times herein mentioned have been, corporations duly organized and existing as such, and engaged in the operation of lines of railroad, pursuant to the authority of law, as common carriers for hire, and in the transportation of property by means of their lines of railroad and in conjunction with their connecting carriers, in interstate commerce from points in the State of California to points in the State of Arizona.

Defendant Bay Transport Company now is, and at all times herein mentioned was, a corporation duly organized and existing as such, and engaged in the transportation of freight by water, in interstate commerce, as a connection of the railroad corporations hereinbefore referred to.

III.

Heretofore, and at various dates between the 21st day of February, 1923, and the 5th day of February, 1925, the plaintiff shipped, or caused to be shipped, from San Francisco, Crockett, Oxnard, and Betteravia, and Spreckels, California, to Phoenix, Arizona, over the lines of said defendants, certain carload shipments of sugar; that there are annexed to the complaints on file herein, marked Exhibit "A," and by reference made a part of said

complaints, statements which correctly show in detail the dates upon which said shipments were made, the dates upon which charges for the transportation thereof were collected, the car initials and numbers of the cars in which the same were loaded, the several points of origin thereof, the several weights of said shipments, the rates thereon assessed and the charges thereon collected, the rates found by the Interstate Commerce Commission to have been reasonable, and the amounts which would have accrued under said [226] last-mentioned rates (said last-mentioned rates and amounts being shown under the column headed "As Should Be" upon said exhibit), and the amount of reparation claimed and allowed by said Commission with respect to each of said shipments.

IV.

On the 22d day of June, 1921, in a proceeding before the Interstate Commerce Commission known as Docket No. 11,532, entitled "Traffic Bureau, Phoenix Chamber of Commerce, et al., complainants v. Director General, et al., defendants," (to which proceeding Arizona Grocery Company, a copartnership, predecessor of the plaintiff herein, was a party complainant) upon a complaint alleging that the rates on sugar in carloads from points in California (including all points in said state referred to on said statements marked Exhibit "A") to Phoenix had been, were, and in the future would be, unreasonable, and in violation of the Interstate Commerce Act, and said Commission,

after due hearing and investigation duly made and rendered its opinion and order in said proceeding, which said opinion is reported in Volume 62, Interstate Commerce Commission Reports, at pages 412 and following. A true and correct copy of said report, and of said order, are annexed hereto, marked Exhibit 1, and by this reference made a part hereof. The Commission in said proceeding found that the rates on sugar, in carloads, from said points in California to Phoenix, Arizona, would in the future be unreasonable to the extent that they exceeded or might exceed 96½ cents per 100 pounds, and ordered and directed that said rates be reduced for the future, and until the further order of said Commission, to a figure not exceeding said date of 96½ cents. Thereafter, the defendants in said proceeding before said Commission, including the defendants in these causes and their connecting carriers, duly and regularly filed and published [227] their tariffs, effective September 17, 1921, naming a rate of 96 cents per 100 pounds upon sugar, in carloads, from points in California to Phoenix, Arizona, which said rate was one-half cent less than the aforesaid rate of 96.5 cents, which said defendant carriers had been ordered by said Commission not to exceed.

Said rate of 96 cents per 100 pounds remained in effect until on or about July 1st, 1922, upon which date, in accordance with the recommendations made by said Commission in a report in proceedings known as Docket No. 13293, Reduced Rates 1922, reported in Volume 68, Interstate Commerce

Commission Reports, at pages 676 and following, said rate of 96 cents was voluntarily reduced to 86½ cents per 100 pounds; said last-mentioned rate of 86½ cents per 100 pounds was named in tariffs of said defendants herein, and of other carriers engaged in interstate commerce, and was duly and regularly filed with the Interstate Commerce Commission in accordance with law.

Said last-mentioned rate of 86½ cents per 100 pounds remained in effect until on or about January 10, 1924, upon which date the same was voluntarily reduced to 84 cents per 100 pounds; said last-mentioned rate of 84 cents per 100 pounds was duly and regularly established by these defendants and by other common carriers engaged in interstate commerce, and was named in tariffs duly and regularly filed in accordance with law.

Said rates of 86½ cents per 100 pounds and 84 cents per 100 pounds were the rates which were successfully in effect, and assessed upon complainant's shipments during the period of movement thereof. Said rates are the rates referred to "as charged" upon said statements marked Exhibit "A."

V.

Said last-mentioned rate of 84 cents per 100 pounds remained in effect until February 25, 1925, upon which date the same was [228] reduced to 71 cents per 100 pounds, pursuant to and in compliance with certain findings and orders made by said Commission in a proceeding known as Docket No. 14,449, reported in Volume 95, Interstate Com-

merce Commission Reports, at pages 244 and following, in which proceeding the Traffic Bureau of the Phoenix Chamber of Commerce, and certain others including the plaintiff, were complainants, and in which proceedings said complainants alleged that the rates on sugar from points in California, including the points of origin of the shipments of plaintiff herein, to Phoenix, Arizona, had been, were, and in the future would be, unreasonable. A true and correct copy of the Report and Order of Said Commission in said proceeding, Docket No. 14,449, is annexed hereto, marked Exhibit No. 2, and by this reference made a part hereof. In said last-mentioned proceeding, Docket No. 14,449, said Commission found and decided that said rates from California points to Phoenix had been unreasonable, in the past, to the extent that they had exceeded 79 cents per 100 pounds prior to July 1st, 1922, and 71 cents per 100 pounds subsequent to that date, and that reparation should be awarded upon shipments made by complainants in said proceeding, to the extent that the charges collected upon said shipments exceeded those which would have accrued at said rates therein declared to have been reasonable; in said proceeding the Commission further made its order requiring the defendants therein, including the defendants in these causes, to establish, and maintain for the future until the further order of the Commission, rates not exceeding 71 cents per 100 pounds from all points in California to Phoenix, Arizona; said last-mentioned rate of 71 cents per 100 pounds was

duly established in compliance with said order on or about February 25, 1925, and was duly and regularly published in tariffs filed with said Commission in accordance with law. [229]

VI.

Thereafter and on February 8, 1927, said Interstate Commerce Commission reopened said proceeding, Docket No. 14,449, upon petition of the defendants therein, for oral argument jointly with a subsequent proceeding brought by the Traffic Bureau of the Phoenix Chamber of Commerce and certain others (including plaintiff) as complainants, and known as Docket No. 16,742.

In said last-mentioned proceeding, Docket No. 16,742, said Commission, on March 12, 1928, made and rendered its opinion and order, reported in Volume 140 of Interstate Commerce Commission Reports, at pages 171 and following, finding that the rates on sugar, in carloads, from points in California designated as the northern California group (which said group includes, among other points, San Francisco, Crockett, and Spreckels) to Phoenix, Arizona, had in the past been unreasonable to the extent that they exceeded 81 cents prior to July 1st, 1922, and 73 cents on and after said last-mentioned date, and that said rates on sugar from points in California designated as the southern California group (which said group includes, among other points, Betteravia and Oxnard, California) to Phoenix, Arizona, had in the past been unreasonable to the extent that they exceeded 79 cents prior to July 1st, 1922, and 71 cents on and after said

date; and that certain of the complainants in said proceeding (including plaintiff herein) had made shipments at the rates found in said proceeding to have been unreasonable; that they had paid and borne the charges thereon and were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates found in said proceeding to have been reasonable; and that said complainants were entitled to reparation, with interest. A true and correct copy of the report and order of said Commission in said last-mentioned proceeding, Docket No. 16,742, is annexed hereto, marked Exhibit No. 3, and by this reference made a part hereof. Said statements marked [230] Exhibit "A," annexed to the complaints on file herein, correctly show, as hereinbefore set forth, the charges actually assessed upon plaintiff's said shipments, in accordance with the tariffs duly published and in effect at the dates of movement, and the charges which would have accrued thereon upon the basis of the rates declared by said Commission in said last-mentioned opinion and order to have been the reasonable rates to have been applied at said dates of movement, together with the differences between the charges so assessed and those which would have accrued, which said last-mentioned differences constitute the amounts herein claimed by the plaintiff, exclusive of interest, and fees of its attorneys and counsel.

VII.

Heretofore, and on the 11th day of March, 1929, the Interstate Commerce Commission duly made

and rendered its supplemental order in said Docket No. 16,742, and cases consolidated therewith, ordering and directing the defendants to pay unto the plaintiff the following sums, to wit:

Southern Pacific Company	$2104.50
Southern Pacific Company and Santa Maria Valley Railroad Company	359.75
The Atchison, Topeka & Santa Fe Railway Company	2203.55
The Atchison, Topeka & Santa Fe Railway Company and Bay Transport Company	1251.02
The Atchison, Topeka & Santa Fe Railway Company and Southern Pacific Company	297.04

together with interest at the rate of 6 per cent per annum from the respective dates of payment of charges as shown on said statements marked Exhibit "A" annexed to the complaints herein. Said last-mentioned order required the payment of said sums on or before April 26, 1929, and stated that the same were as reparation on account of unreasonable rates charged for the transportation of certain carload shipments of sugar to points in Arizona from points in California. A true and correct copy of [231] said order is annexed to each of the complaints on file herein, marked Exhibit "C," and by reference made a part of said complaints. Defendants have failed and refused to comply with said order, or to pay said sums or any part thereof to the plaintiff, although demand and request

thereof have heretofore been duly made by plaintiff upon said defendants.

Dated at Phoenix, Arizona, January 8, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiff.
BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants. [232]

EXHIBIT No. 1.

No. 11532.

TRAFFIC BUREAU, CHAMBER OF COMMERCE, PHOENIX, ARIZ., ET AL.,

v.

DIRECTOR GENERAL, AS AGENT, SOUTHERN PACIFIC COMPANY, ET AL.

Submitted April 12, 1921. Decided June 22, 1921.

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1. Rates on sugar, in carloads, from California points to Phoenix, Ariz., found unreasonable. Reasonable rate prescribed for the future.
2. Following *Phoenix Chamber of Commerce* v. *Director General,* 62 I. C. C., 368, prayer for the establishment of through routes and joint rates from San Francisco, Calif., by way of Phoenix, to points on the Southern Pacific, Maricopa, Ariz., to El Paso, Tex., denied.

Roland Johnston for complainants.

F. A. Jones for Arizona Corporation Commission, intervener.

E. W. Camp, Elmer Westlake, G. H. Baker, and *M. A. Cummings* for defendants.

REPORT OF THE COMMISSION.

Division 1, Commissioners McCHORD, AITCHISON, and LEWIS.

AITCHISON, *Commissioner:*

This case was made the subject of a proposed report by the examiner. Exceptions thereto were filed by defendants.

Complainants are the Traffic Bureau, Chamber of Commerce, Phoenix, Ariz., an organization of shippers and citizens of Phoenix, Hall-Pollock Company, and Haas-Baruch & Company, corporations, and the Arizona Grocery Company, a partnership.

The three firms named are engaged in the grocery business at Phoenix. By complaint filed June 14, 1920, they allege that the rates charged by defendants for the transportation of sugar from points in California to Phoenix, were and are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, 3, and 4 of the interstate commerce act and section 10 of the federal control act. They ask us to prescribe just and reasonable rates for the future, to award reparation on all shipments moving subsequently to May 2, 1916, and to establish through routes and joint rates from San Francisco, Calif.,

by way of Phoenix, to Maricopa, Ariz., and points east thereof, on lines of the Southern Pacific Company, to and including El Paso, Tex. The Arizona

Exhibit No. 1, p. 1. [233]

Cor (413) poration Commission intervened on behalf of complainants. The allegation of a fourth section violation was abandoned at the hearing. Rates are stated herein in amounts per 100 pounds.

Phoenix is the only point in Arizona common to the lines of the Atchison, Topeka & Santa Fe Railway and the Southern Pacific. It is located on the branch of the Santa Fe extending south from Ash Fork, Ariz., but is served by that carrier on traffic from California by means of a branch line known as the Parker cut-off, which leaves the main line at Cadiz, Calif., and connects with the Ash Fork branch at Wickenburg, Ariz. Phoenix is served by the Southern Pacific through the medium of the Arizona Eastern Railroad, which it owns and with which it connects at Maricopa, a point on the main line 35 miles southerly from Phoenix. The short-line mileage from San Francisco to Phoenix is via the Santa Fe over the Parker cut-off; from Los Angeles, via the Southern Pacific lines.

Sugar is produced at various points in California. Hawaiian cane sugar is refined at San Francisco and at Crockett, a point 29 miles east of San Francisco on the Southern Pacific; beet sugar is produced at Alvarado, Betteravia, Spreckels, Los Alamitos, Dyer, Delhi, Oxnard, and other points in the central and southern portions of the state. For the

purpose of stating rates to Arizona, the refining and producing points of origin in California are included in one group. Rates on sugar from California are also grouped as to destination points. On the main line of the Santa Fe a destination group extends from Yucca, Ariz., to El Paso, and on the main line of the Southern Pacific from Yuma, Ariz., to El Paso. Los Angeles is the nearest point in the California group to Phoenix, and San Francisco possibly the farthest. The distances to Phoenix via the Santa Fe are 489 and 800 miles, and via the Southern Pacific, 451 and 920 miles, respectively, from the two points of origin.

On May 1, 1916, the rates on sugar from the California group to Phoenix were 60 cents, minimum weight 60,000 pounds, and 65 cents, minimum weight 36,000 pounds. Contemporaneously rates from the California group to points in the destination groups described were 5 cents lower than the corresponding Phoenix rates. This difference of 5 cents in favor of main-line points was fixed by us in *Arizona Corporation Commission* v. *A., T. & S. F. Ry. Co.*, 34 I. C. C., 158, in which we found the Phoenix rate of 75 cents, minimum 36,000 pounds, unreasonable to the extent that it exceeded, by more than 5 cents, the main-line rate to Maricopa. On June 25, 1918, these rates were increased 25 per cent, the main-line rates becoming 69 and 75 cents and the Phoenix rates 75 and 81.5 cents. Subsequently a flat increase of 22 cents was substituted for the percentage increases, and the rates to

main-line points became 77 and 82 cents on November

62 I. C. C.

Exhibit No. 1, p. 2. [234]

(414) 25, 1919, and to Phoenix, 82 and 87 cents on February 18, 1920. On February 29, 1920, defendants canceled the rates to main-line and branch-line points, including Phoenix, under the lower minimum weight published in connection with roads under federal control and, as to such roads, increased the Phoenix rate under the minimum weight of 60,000 pounds to 83.5 cents which, apparently, was done by advancing the 5-cent difference over main-line points to 6.5 cents. In schedules filed to become effective May 14, 1920, the carriers attempted to bring the rates of nonfederal lines into harmony with those of the lines previously under federal control, but upon protest we suspended the items carrying such increases. In *Sugar from California Points to Arizona,* 58 I. C. C., 737, we held that the cancellation of the 36,000-pound minimum was justified and vacated the order of suspension. The present rates, including the general increases authorized by us on July 29, 1920, are 96.5 cents to main-line points and $1.045 to Phoenix, minimum weight 60,000 pounds. The Phoenix rate applies to practically all points on the Arizona Eastern north of Maricopa and to all points on the branch line of the Santa Fe south of Ash Fork and as far west as Parker, Ariz. There is no movement of sugar from California through Phoenix to points beyond taking lower rates.

Complainants admit that the grouping of California sugar-producing points is advantageous, as it gives them the benefit of a wide purchasing market on a uniform rate. They contend, however, that the rates to Phoenix are unreasonable, in comparison with lower rates from the California group to points involving hauls for distances which are greatly in excess of those to Phoenix. In the subjoined statement the revenues per car, per ton-mile, and per car-mile yielded by the rates to Phoenix are compared with revenues produced by certain of the rates cited by complainants. The rates shown include the general increases authorized by us on July 29, 1920.

From—	To—	Distance	Rate per 100 pounds.	Revenue. Per Car.	Revenue. Per ton-mile.	Revenue. Per car-mile.
					Mills.	*Cents.*
Los Angeles, Calif.	Phoenix, Ariz.	451	[1] $1.045	$627.00	46.3	139
San Francisco, Calif.	do	800	[1] 1.045	627.00	26.1	78.3
Betteravia, Calif.	do	655	[1] 1.045	627.00	31.9	95.7
Do	El Paso, Tex.	1,020	[1] .965	579.00	18.9	56.7
New Orleans, La.	do	1,192	[2] 1.080	388.80	18.1	32.6
San Francisco, Calif.	St. Paul, Minn.	2,154	[1] 1.025	615.00	10	28.6
Los Angeles, Calif.	Chicago, Ill.	2,231	1.09525	657.00	9.8	29.4

[1] Minimum weight 60,000 pounds. [2] Minimum weight 36,000 pounds.

Defendants take the position that the rates on sugar from California producing points to the central and eastern sections of the (415) country

62 I. C. C.

Exhibit No. 1, p. 3. [235]

are on a subnormal basis due to the necessity of marketing the California product, which greatly exceeds local consumption, in competition with sugar refined at New Orleans and Atlantic seaboard points; that a normal basis of rates would prevent the movement of California sugar because of the great disparity in distances from the competing refineries to the common markets; and that intermediate main-line points are given the benefit of these extremely low competitive rates. They attempt to justify the present rates to Phoenix on the grounds that the volume of movement is small and that market conditions present at El Paso and the other points cited by complainant are not met with at Phoenix. They argue that we recognize the potency of market competition in *Fourth Section Violations in Rates on Sugar,* 31 I. C. C., 511, by permitting the maintenance of lower rates on sugar from California to Missouri River points than those contemporaneously in effect to intermediate points on the Rock Island east of Tucumcari, N. Mex., in connection with routing, Southern Pacific to El Paso, El Paso & Southwestern to Tucumcari, Rock Island beyond. In that case we required the Southern Pacific to hold the El Paso rate from California as maximum at intermediate points, and denied the Santa Fe authority to

charge lower rates from California to Trinidad, Colo., and points east thereof than it contemporaneously maintained to intermediate points. Accordingly, these carriers reduced the main-line rates in Arizona and New Mexico to the level of the rates to El Paso and Trinidad, respectively.

A partial list of the shipments on which reparation is sought shows that 48 carloads moved during the period June, 1919, to August, 1920, inclusive, 34 being routed via Southern Pacific and 14 via Santa Fe. A statement filed by the defendants shows that during the year 1916, 1917, 1919, and the first six months of 1920, 348 cars aggregating 9,423 tons moved from California points to Arizona via Santa Fe, of which 78 cars aggregating 2,229 tons moved to Phoenix.

From Betteravia, which may be taken as fairly representative of the California group, the present rate to Phoenix yields, for a distance of 655 miles, revenues of $627 per car, 95.7 cents per car-mile, and 31.9 mills per ton-mile upon the basis of the tariff minimum weight of 60,000 pounds. A substantial volume of sugar moves from California to Phoenix in carloads. While, no doubt, relatively lower rates are justified to more distant points where the force of market competition is controlling, nevertheless, Phoenix is entitled to rates, which, measured by present-day standards, are just and reasonable. If, however, the rates to competitive points are remunerative, then clearly the rates to Phoenix are excessive, even after giving due con-

Exhibit No. 1, p. 4. [236]

(416) sideration to the volume of traffic handled to the points in question, and the character of the haul into Arizona. The rate of 96.5 cents from California is carried on the main line of the Southern Pacific for a distance of 400 miles east of Maricopa. The application of the same rate to Phoenix, but 35 miles distant from Maricopa does not appear to be unreasonable. The Southern Pacific and the Arizona Eastern are properly treated as one line in this instance. *Pacific Creamery Co.* v *S. P. Co.*, 42 I. C. C., 93, 96.

Complainants contend that the maintenance of rates from California of $1.045 to Phoenix and 96.5 cents to Tucson is unduly prejudicial to Phoenix, to the undue preference and advantage of Tucson. The record shows that Phoenix jobbers sell sugar at several points in territory contiguous to both Phoenix and Tucson, in competition with jobbers located at the latter point. While there is an indication that in some instances the Phoenix jobbers must shrink their profits to compete with Tucson, there is no evidence to show that this results from the difference in rates from California to the two competing points.

Complainants' request for the establishment of through routes and joint rates from San Francisco by way of Phoenix to Maricopa and points east thereof on the lines of the Southern Pacific to and including El Paso is substantially the same as was made in *Phoenix Chamber of Commerce* v. *Director General*, 62 I. C. C., 368, and the evidence is identical by reason of the stipulation into this record of

the testimony there introduced. In that case we found that the proposed arrangement had not been shown to be necessary or in the public interest and denied the petition. There is no basis for a different finding on this record.

We find that the rates attacked were, are, and for the future will be, unreasonable to the extent that they exceeded, exceed, or may exceed 96.5 cents. There is no evidence of record that complainants made shipment of sugar from California points to Phoenix, and paid and bore charges thereon at rates higher than those herein found reasonable. In the event that such shipments were made, complainants should file statements under rule V of the Rules of Practice, showing the details of such shipments, accompanied by appropriate proof in the form of an affidavit that the shipments were made and that the freight charges were paid and borne by complainants. If defendants object to proof in the form of an affidavit they may request a further hearing with respect to the subject matter thereof.

The prayer for a through route and joint rates from San Francisco by way of Phoenix to Maricopa and points east thereof on the line of the Southern Pacific, to and including El Paso, is denied.

An appropriate order will be entered.

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Exhibit No. 1, p. 5. [237]

ORDER.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D. C., on the 22d day of June, A. D. 1921.

No. 11532.

Traffic Bureau of the Chamber of Commerce, Phoenix, Ariz.; Hall-Pollock Company, Phoenix, Ariz.; Haas-Baruch & Company, Incorporated, Phoenix, Ariz.; The Melczer Company, Phoenix, Ariz.; and The Arizona Grocery Company, Phoenix, Ariz.

v.

James C. Davis, Director General of Railroads, as Agent; Southern Pacific Company; Arizona Eastern Railroad Company; and The Atchison, Topeka and Santa Fe Railway Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said Division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation be, and they are hereby, notified and required to cease and desist, on or before September 17, 1921,

and thereafter to abstain, from publishing, demanding, or collecting their present rates for the transportation of sugar in carloads from California points to Phoenix, Ariz.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before September 17, 1921, upon notice to this Commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar in carloads from California points to Phoenix, Ariz., rates which shall not exceed 96.5 cents per 100 pounds.

It is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission, Division 1.

[Seal.] GEORGE B. McGINTY,

Secretary.

Exhibit No. 1, p. 6. [238]

EXHIBIT No. 2.

10081

INTERSTATE COMMERCE COMMISSION

No. 14449

TRAFFIC BUREAU OF PHOENIX CHAMBER OF COMMERCE ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

26875—25

Washington: Government Printing Office: 1925

Exhibit No. 2, p. 1. [239]

No. 14449

TRAFFIC BUREAU OF THE PHOENIX CHAMBER OF COMMERCE ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted July 14, 1923. Decided January 6, 1925

Rate on sugar, in carloads, from California points to Phoenix, Ariz., found to have been and to be unreasonable, but not unjustly discriminatory, or unduly prejudicial. Reasonable rate for the future prescribed, and reparation awarded.

Roland Johnston for complainants.

E. W. Camp, Chalmers, Stahl Fennemore & Longan, James R. Bell, F. H. Wood, F. B. Austin, G. B.

Durbrow, Elmer Westlake, James E. Lyons and *G. P. Bullard* for defendants.

Roland Johnston, D. R. Johnson, and *L. G. Reif* for Arizona Corporation Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by complainants to the report proposed by the examiner. We have reached conclusions differing from those proposed by him.

Complainants are the Traffic Bureau of the Chamber of Commerce, Phoenix, Ariz., an organization of shippers and citizens of Phoenix, and Haas-Baruch & Company, Hall-Pollock Company, the Melczer Company, and James A. Dick Company, corporations, engaged in the wholesale grocery business at Phoenix. By complaint filed November 3, 1922, they allege that the rates on sugar, minimum 80,000 pounds, from San Francisco and other points in California to Phoenix are, and since February 17, 1921, have been unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul provision of the fourth section. The prayer is for reasonable and nonprejudicial rates for the future, and reparation on past shipments. The Arizona Corporation Commission intervened on behalf of complainants and the El Paso Chamber of Commerce also intervened. The rates will be stated in amounts per 100 pounds.

Exhibit No. 2, p. 2. [240]

(245) Phoenix is the only point in Arizona served by both the Atchison, Topeka & Santa Fe and the Southern Pacific. It is at the terminus of a branch line of the Santa Fe extending south from Ashfork, Ariz., 194 miles, but California traffic over the Santa Fe is handled over a branch line, known as the Parker cut-off, extending from Cadiz, Calif., to Wickenburg, Ariz., a point on the Ashfork-Phoenix branch, approximately 54 miles north of Phoenix. Traffic from California moving over the Southern Pacific reaches Phoenix through the medium of the Arizona Eastern Railway, which connects with the Southern Pacific at Maricopa, 35 miles southerly from Phoenix. The points of production extend from San Francisco on the north to Los Angeles on the south and include a number of points where Hawaii and California beet sugar is refined. For the purpose of stating rates on sugar to Arizona, the refining points are included in one group and Arizona points are also grouped. The destination group includes all points on the main line of the Santa Fe from Yucca, Ariz., to El Paso, Tex. It also includes points on the main line of the Southern Pacific from Yuma, Ariz., to El Paso, but the fifth-class rates are observed as maxima, which produces rates at Yuma and a few contiguous points slightly lower than the commodity rate. The distances to Phoenix over the Santa Fe are 489 and 800 miles, and over the Southern Pacific 451 and 921 miles, from Los Angeles and San Francisco, respectively, the nearest and most distant refining points. Using the shorter of the two routes in each

instance, the average distance from Los Angeles and San Francisco to Phoenix is about 625 miles. The complainants presented exhibits purporting to show that the average short-haul distance from the points of origin involved to Phoenix is approximately 581 miles.

From September 17, 1921, to and including June 30, 1922, a rate of 96 cents, minimum 60,000 pounds, applied on sugar from the California points to Phoenix. On the latter date it was reduced under the general reductions of 1922 to 86.5 cents. The 86.5-cent rate also applied to practically all mainline points on the Southern Pacific from the California State line to El Paso, Tex., inclusive, including Tucson, Ariz., said to be a point competitive with Phoenix. Following the general reductions of 1922, the defendants until recently maintained rates on sugar ranging from 79 cents at St. Louis, Mo., and Chicago, Ill., and a number of points grouped therewith, to 83 cents at Burlington, Iowa, and points grouped therewith, minimum 80,000 pounds. To the same territory somewhat higher rates subject to a minimum of 60,000 pounds were maintained, the (246) rate to Chicago being 91

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cents. Complainants contend that the rate to Phoenix should not exceed the rates to the more distant points, and, in fact, should be lower than the rates to El Paso and Tucson, reflecting the shorter hauls to Phoenix than to El Paso and Tucson. The rates to the latter points apply in con-

nection with a 60,000 pounds minimum, the same as to Phoenix.

At the hearing, the complainants offered testimony intended to show unjust discrimination and undue prejudice against Phoenix and preference for Tucson, which consisted principally of a comparison of the carload rates to and the less-than-carload rates beyond Phoenix, with the rates to and beyond Tucson. It was claimed that Tucson merchants have some advantage over merchants at Phoenix under the in-and-out rates. The outbound rates from Phoenix to Southern Pacific points are on a two-line basis, while the rates from Tucson to the same points are on a lower one-line basis prescribed by the Arizona Corporation Commission, and the differences in the total in-and-out rates are represented by the differences in the outbound rates. Outbound shipments from Tucson to points on the Arizona Eastern apparently are often handled by motor trucks rather than by rail. No further discussion will be made of the Tucson situation inasmuch as the complaint appears to raise the issue of undue prejudice and discrimination only as to points east of Phoenix to which the rates were lower than to that point. No evidence of direct competition between Phoenix, on the one hand, and points alleged in the complaint to be preferred, on the other appears of record.

Complainants' evidence in support of their allegation of unreasonableness consists principally of comparisons with rates on sugar from California to representative points in the Middle West such as

Burlington and Chicago, and from Sugarland, Tex., New Orleans, La., and Colorado points to El Paso and Phoenix. At the time of the hearing, many of these rates were in issue in *Sugar Cases of 1922,* 81 I. C. C. 448, decided July 14, 1923. In that decision fourth-section relief authorized by *Fourth Section Violations in Rates on Sugar,* 31 I. C. C. 511, permitting lower rates to Chicago and other Middle West points than to intermediate points, was withdrawn. The rates have subsequently been revised in conformity with the fourth section, the rate to Chicago becoming 84 cents, minimum 80,000 pounds, which rate is not exceeded at intermediate points. A rate of 84 cents has accordingly been established to Phoenix and points on the Southern Pacific in Arizona and New Mexico, and to El Paso, in connection with which rate a minimum of 60,000 pounds has been maintained.

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(247) The following table shows a comparison of the present rate on sugar to Phoenix with rates offered by the complainants as indicating the unreasonableness of the rate under attack:

From—	To—	Distance	Rate	Minimum weight	Car-mile earning	Ton-mile earning
		Miles	*Cents*	*Pounds*	*Cents*	*Mills*
California	Phoenix	625	84	60,000	80.64	26.9
Sugarland	El Paso	804	71	36,000	31.79	17.66
New Orleans	do	1,193	86	36,000	25.95	14.42
Lamar, Colo	do	749	80.5	36,000	38.69	21.49
California	do	1,054	84	60,000	47.8	15.9
Do	Tucson	741	84	60,000	68.0	22.7

It is probable that the car-mile earnings shown, being based upon varying minimum weights, do not properly reflect the relative situation existing as to actual movements. The record does not, however, show the actual loading.

In *Memphis-Southwestern Investigation*, 77 I. C. C. 473, we prescribed for application in the general territory comprising Louisiana, Arkansas, and southern Missouri a distance scale of rates on sugar in which the rate for 625 miles is 58 cents. The present rate from California to Phoenix is approximately 43 per cent higher. In *Arizona Packing Co.* v. *A. E. R. R. Co.*, 81 I. C. C. 115, we prescribed on livestock, packing-house products, and fresh meats scales of rates to and from points in Arizona higher than scales also prescribed by us in Arkansas, Oklahoma, Louisiana, and Texas, known as the 1716 scales, but generally less than 30 per cent in excess of those rates. In that case we said, at page 120, with respect to rates from points in Arizona to points in California on beef cattle, sheep, and goats prescribed by us in *American National Live Stock Asso.* v. *S. P. Co.*, 26 I. C. C. 37:

> As originally prescribed, that scale was about 30 per cent higher than the 1716 scale, but this spread has been considerably narrowed in the course of general increases and reductions which have since been made. Rates based on the Arizona-California scale have been voluntarily established by the Santa Fe to points in Arizona from stations in New Mexico on its line west of Albuquerque.

The average revenue per ton-mile and per car-mile for the Atchison, Topeka & Santa Fe (entire line) for 1921 are shown as 16.42 mills and 29.96 cents, respectively, for an average haul of 331.69 miles. Similar figures for the Southern Pacific (Pacific system) are for revenue per ton-mile 17.31 mills, revenue per car-mile 34.93 cents, and average haul 288.51 miles. The figures for 1921 do not include the general reduction of 10 per cent made in 1922.

Defendants direct attention to the relatively small consuming markets in Arizona for sugar, and show that the total movement (248) to Phoenix is

Exhibit No. 2, p. 5. [243]

somewhat less than 100 carloads per annum. They further contend that there is no necessity, commercially or otherwise, for the establishment of lower rates on a minimum of 80,000 pounds than on a minimum of 60,000 pounds.

The rates on sugar from California points to Phoenix have been before the commission in a number of cases. In *Phoenix Chamber of Commerce* v. *Director General,* 62 I. C. C. 412, the commission found that the then existing rate of $1.045 to Phoenix was unreasonable to the extent that it exceeded 96.5 cents which contemporaneously applied to Tucson, Maricopa, Ariz., and other Southern Pacific main-line points. The circumstances under which the rates on sugar were established and the conditions surrounding its transportation to Phoenix are fully set out in that case and need not be further discussed here.

We find that the rates assailed have not been shown to be unjustly discriminatory or unduly preferential or prejudicial, but we find the rate from California points involved to Phoenix to have been and to be unreasonable to the extent that it exceeded and exceeds 79 and 71 cents per 100 pounds, respectively, prior and subsequent to July 1, 1922, minimum 60,000 pounds. We further find that complainants, Haas-Baruch & Company, Hall-Pollock Company, and the Melczer Company, made shipments and paid and bore charges thereon at the rate herein found unreasonable; that they have been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that they are entitled to reparation with interest. Complainants, Haas-Baruch & Company, Hall-Pollock Company, and the Melczer Company should comply with Rule V of the Rules of Practice.

An order for the future will be entered.

HALL, *Commissioner,* dissenting:

Some of these complainants came before us in June, 1920, attacking the rates on sugar, in carloads, from the California refineries to Phoenix, and asking for reparation, just as they do here. The carload minimum then, as now, was 60,000 pounds. We found the rate unreasonable to the extent that it exceeded 96.5 cents, which we then prescribed for the future. That decision was made June 22, 1921. *Phoenix Chamber of Commerce* v. *Director General,* 62 I. C. C. 412. They now come by complaint filed November 3, 1922, and allege that a rate on the same traffic of 96 cents, 0.5 cent lower than that

so prescribed, has been unreasonable since February 17, 1921, four months prior to our former decision, and again ask reparation. Meantime, on July 26, 1922, we had found not unreasonable a rate of 96.5 cents, minimum 60,000 pounds, from California refining points to destinations in Nevada and Utah for hauls ranging from 419 to 823 miles, (249) as

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compared with the hauls here considered ranging from 489 to 800 miles over the Santa Fe, and 451 to 921 miles over the Southern Pacific. *Nevada Public Service Commission* v. *S. P. Co.*, 73 I. C. C. 240. That rate also was reduced by the carriers to 96 cents. The general 10 per cent reduction of July 1, 1922, brought this reasonable rate down to 86.5 cents and later, in the general sugar readjustment, the carriers established to Phoenix a rate of 84 cents, minimum 60,000 pounds. All of these were lower than what we had found reasonable and prescribed.

The majority do not reverse those decisions. They do not show change in circumstances and conditions but refer to them as "fully set out" in *Phoenix Chamber of Commerce* v. *Director General, supra.* And yet they find unreasonable rates lower than the rate prescribed in that case, and award reparation to a level 1½ cents lower than that found reasonable, for a period which begins four months before that case was decided.

The rate of 84 cents, minimum 80,000 pounds, established January 11, 1924, as a result of our findings in *Sugar Cases of 1922*, 81 I. C. C. 448,

in which we declined to continue fourth-section relief as to rates to Chicago, Ill., is blanketed from Chicago to and beyond Phoenix. The rate to Chicago under the 60,000-pound minimum is 91 cents. Comparison of the rates to the nearest and farthest points in a rate blanket of this extent is futile. The rate of 84 cents to Chicago is necessary if California sugar, concededly far exceeding the local demands, is to find a market in the Middle West in competition with sugar from refineries on the Atlantic seaboard and Gulf of Mexico. Other and broader blankets respond, like this, to the marketing demands of Pacific coast commodities. They should not be lightly disturbed.

For the average distance of 625 miles to Phoenix this 84-cent rate earns 26.8 mills per ton-mile, which compares favorably with 27.3 mills per ton-mile under the average present rate of 82 cents from California refineries to destinations in Nevada and Utah considered in the *Nevada case, supra,* for an average distance of 600 miles. There the annual movement was shown to be 79 carloads and here less than 100. The majority ignore these comparisons but rest on others less pertinent.

There is no evidence as to the volume of movement under the rates to El Paso from the refineries at Sugarland, Tex., New Orleans, La., and Lamar, Colo., or as to transportation conditions generally. A witness for defendants testified that the rates to El Paso reflect competition from these three refining points and that in this respect El Paso is comparable to Chicago, where the rates are depressed by competition from the Atlantic, the Pa-

cific, and the Gulf (250) refineries. Nor is there

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Exhibit No. 2, p. 7. [245]

any evidence that conditions surrounding movement of sugar in this territory are such as to warrant comparison with the Memphis-Southwestern scale. Lacking that evidence we look in vain to *Arizona Packing Co.* v. *A. E. R. R. Co.*, 81 I. C. C. 115, cited by the majority.

The reasonableness of the basis prescribed is not self-demonstrative. Nor is this failure of demonstration supplied by the evidence of record, by the comparison with the Memphis-Southwestern scale, injected by the majority, or by the necessities of the case. Under such circumstances the complaint should be dismissed. I am authorized by Chairman AITCHISON and Commissioners ESCH and LEWIS to say that they concur in this expression of dissent.

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Exhibit No. 2, p. 8. [246]

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 6th day of January, A. D. 1925.

No. 14449.

Traffic Bureau of the Phoenix Chamber of Commerce; Haas-Baruch & Company; Hall-Pollock Company; The Melczer Company; and James A. Dick Company

v.

The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Arizona Eastern Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before February 25, 1925, and thereafter to abstain, from publishing, demanding, or collecting their present rates for the transportation of sugar, in carloads, from points in California to Phoenix, Ariz.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before February 25, 1925, upon notice to this commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, from points in California to Phoenix, Ariz., rates which shall not exceed 71 cents per 100 pounds, minimum 60,000 pounds.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the commission.

[Seal] GEORGE B. McGINTY,
Secretary.

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EXHIBIT No. 3

13146

INTERSTATE COMMERCE COMMISSION

No. 16742[1]

TRAFFIC BUREAU OF PHOENIX CHAMBER OF COMMERCE ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted April 6, 1927. Decided March 12, 1928

Rates on sugar, in carloads, from California points

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[1]This report also comprises No. 16770, Bashford-Burmister Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 1), Central Commercial Company *v.* Same; No. 16770 (Sub-No. 2), Wheeler-Perry Company *v.* Santa Maria Valley Railroad Company et al.; No. 16770 (Sub-No. 3), T. F. Miller Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 4), E. F. Sanguinetti *v.* Southern Pacific Company et al.; No. 16770 (Sub-No. 5), Arizona Grocery Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 6), Arizona Wholesale Grocery Company et al. *v.* Arizona Eastern Railroad Company et al.; No. 16770 (Sub-No. 7), C. N. Cotton Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 8), [illegible] Brothers Trading Company et al. *v.* Same; No. 16770 (Sub-No. [illegible] H. Dagg Mercantile Company *v.* Same; No. 17459, Phelps Dodge [illegible]antile Company *v.* Same; No. 17549 (Sub-No. 1), Baffert & Leon *v.* Same; No. 17466, United Verde Extension Mining Company *v.* Same; No. 17781, Simpson-Ashby Company *v.* Southern Pacific Company; and Nos. 14140, Solomon-Wickersham Company *v.* Santa Maria Valley Railroad Company et al., and 14449, Traffic Bureau, Phoenix Chamber of Commerce et al. *v.* Atchison, Topeka & Santa Fe Railway Company et al., reopened for argument.

to destinations in Arizona and from California and Colorado points to Gallup, N. Mex., found unreasonable. Reasonable rates prescribed and reparation awarded. Original findings in Nos. 14449 and 14140 modified in part. Former reports 93 I. C. C. 244 and 101 I. C. C. 667.

Roland Johnston, Chas. E. Blaine, Calvin L. Blaine, F. W. Pullen, and *R. S. Sawyer* for complainants.

James R. Bell, G. H. Muckley, James E. Lyons, H. H. McElroy, A. Burton Mason, J. L. Fielding, Del W. Harrington, E. W. Camp, Platt Kent, F. W. Mielke, and *Berne Levy* for defendants.

REPORT OF THE COMMISSION

CAMPBELL, *Chairman:*

These cases are related and will be disposed of in one report. Defendants in all of the cases and complainants in Nos. 16742, 16770, and Sub-Nos. 1, 3, 4, 5, and 9 filed exceptions to the proposed report of the examiners, and defendants replied to complainants' exceptions. The cases were orally argued before us.

In these complaints it is alleged that the rates on sugar, in carloads, from California points to destinations in Arizona and from (172) California, Kansas, and Colorado points to Gallup, N. Mex., were and are unreasonable and in some instances unduly prejudicial and preferential. We are asked to prescribe just and reasonable rates for the future

and to award reparation. Rates and rate differences are stated in amounts per 100 pounds.

In No. 16742, filed February 9, 1925, and No. 17781, filed informally March 16, 1925, and formally November 27, 1925, reparation is asked, respectively, on shipments from California points to Phoenix to the basis of the rate of 71 cents found reasonable on and after July 1, 1922, in No. 14449, *Phoenix Chamber of Commerce* v. *A., T. & S. F. Ry. Co.*, 95 I. C. C. 244, reopened for argument with these consolidated cases.

In No. 16770 (Sub-Nos. 1 to 9), filed on various dates from February 17 to May 5, 1925, inclusive, it is alleged that the rates from California points to Prescott, Kingman, Tucson, Clarkdale, Yuma, Bowie, Safford, Globe, Flagstaff, Winslow, and Holbrook, Ariz., and from California, Kansas, and Colorado points to Gallup were and are unreasonable. There are also allegations that the rates assailed were and are unduly prejudicial to Tucson and unduly preferential of Phoenix; unduly prejudicial to Bowie, Safford, and Globe and unduly preferential of Phoenix and other points taking the same rate Lordsburg and Deming, N. Mex., and El Paso, Tex.; unduly prejudicial to Gallup and unduly preferential to Albuquerque, N. Mex., and El Paso; and unduly prejudicial to Kingman, Flagstaff, Winslow, and Holbrook and unduly preferential of Albuquerque and Phoenix.

In Nos. 17549, 17549 (Sub-No. 1), and 17466, filed, respectively, on September 3, 1925, February 9, 1926, and August 24, 1925, the rates from Califor-

nia points to Bisbee, Douglas, Clifton, Tucson, and Clarksdale, Ariz., are alleged to have been and to be unreasonable and also unduly preferential of Phoenix and other points.

No. 16742 and No. 16770 (Sub-Nos. 1 to 9) were heard together. Nos. 17549, 17549 (Sub-No. 1), and 17466 were heard together. The parties in No. 17781 agreed to submission of the case upon the record in Nos. 17549, 17549 (Sub-No. 1), and 17466, except as to proof of payment of freight charges.

Phoenix is the only point in Arizona served by both the Atchison, Topeka & Santa Fe, hereinafter referred to as the Santa Fe, and the Southern Pacific. It is at the terminus of a branch line of the Santa Fe extending south from Ash Fork, Ariz., 194 miles, but California traffic over the Santa Fe is handled over a branch line, known as the Parker cut-off, extending from Cadiz, Calif., to Wickenburg, Ariz., a point on the Ashford-Phoenix branch, approximately 54 miles north of Phoenix. At the

time of the hearings traffic from California (173) moving over the Southern Pacific reached Phoenix over the former Arizona Eastern Railroad, which connects with the main line of the Southern Pacific at Maricopa, Ariz., 35 miles south of Phoenix. Since the hearings the Southern Pacific has opened its new line from Wellton, Ariz., to Phoenix. The distances over this new line are 25 miles shorter than via Maricopa. From Los Angeles and San Francisco the present distances to Phoenix are, re-

spectively, 489 and 800 miles over the Santa Fe and 426 and 896 miles over the Southern Pacific.

Kingman, Williams, Flagstaff, Winslow, Holbrook, and Gallup are on the main line of the Santa Fe. Clarkdale is at the terminus of a branch line of the Santa Fe, 38 miles in length, which extends from Drake, Ariz., a point 21 miles south of Ash Fork on the Maricopa-Phoenix line.

Yuma, Tucson, and Bowie are on the main line of the Southern Pacific. Safford and Globe are on a branch line of that carrier extending from Bowie. Clifton is on a branch line of the same carrier extending from Lordsburg. Bisbee and Douglas are served by the so-called southern lines of the Southern Pacific, formerly the El Paso & Southwestern.

The California points of production extend from San Francisco on the north to Los Angeles on the south. They include San Francisco and Crockett, the only two points at which Hawaiian cane sugar is refined, as well as all points at which beet sugar is produced. All California refining points take the same rates to Arizona destinations.

In *Maier & Co.* v. *Southern Pacific Co.*, 29 I. C. C. 103, decided January 6, 1914, a rate on sugar from Los Angeles and Los Alamitos, Calif., to Benson, Ariz., of 60 cents, minimum 36,000 pounds, was prescribed. This was the contemporaneous rate to El Paso, a point more distant than Benson on the same line. The 60-cent rate was established generally to main-line Southern Pacific and Santa Fe points in Arizona and New Mexico, and the San Francisco rate was made 10 cents higher.

In *Fourth Section Violations in Rates on Sugar,* 31 I. C. C. 511 we denied authority to continue rates on sugar from San Francisco and other sugar-producing points in California to Trinidad, Colo., and other points east thereof, which were lower than the rates concurrently applicable on like traffic to intermediate points on the line of the Santa Fe, and also denied authority to the Southern Pacific, El Paso & Southwestern, and Chicago, Rock Island & Pacific to continue lower rates on sugar from the points of production described to the Missouri River than the rates concurrently applicable to intermediate points west of Tucumcari, N. Mex. In addition

Exhibit No. 3, p. 3. [250]

(174) to making substantial reductions in the rates in connection with the minimum of 36,000 pounds, the carriers on November 15, 1914, established rates, with a minimum of 60,000 pounds, from all California producing points to practically all Arizona points on a basis 5 cents lower than the rates from Los Angeles to the same destinations upon the lower minimum.

In *Arizona Corporation Commission* v. *A., T & S. F. Ry. Co.,* 34 I. C. C. 158, the rates from California to Phoenix and Prescott were found to be unreasonable to the extent that they exceeded the rates to the main-line junction points by more than 5 cents. As a result, on May 1, 1916, the rates from California to Phoenix and Prescott became 60 cents, minimum 60,000 pounds, and 65 cents minimum 36,000 pounds. On June 25, 1918, the main-line

rates were increased 25 per cent to 69 and 75 cents, respectively, and the Phoenix and Prescott rates became 75 and 81.5 cents. Subsequently a flat increase of 22 cents was substituted for the percentage increase and the rates to main-line points became 77 and 82 cents on November 25, 1919, and to Phoenix and Prescott 82 and 87 cents on February 18, 1920.

On February 29, 1920, the carriers cancelled the rates to main-line and branch-line points under the lower minimum weight published in connection with roads under Federal control and, as to such roads, increased the Phoenix and Prescott rate under the minimum of 60,000 pounds to 83.5 cents. This cancellation, as to nonfederal lines, was found justified in *Sugar from California Points to Arizona,* 58 I. C. C. 737.

On August 26, 1920, the rates on sugar from California, minimum 60,000 pounds, became 96.5 cents to main-line points and $1.045 to Phoenix and Prescott. In *Phoenix Chamber of Commerce* v. *Director General,* 62 I. C. C. 412, decided June 22, 1921, the Phoenix rate was found unreasonable to the extent that it exceeded 96.5 cents, and reparation was awarded on that basis. On June 27, 1921, the carriers reduced the main-line rates to 96 cents, and on September 17, 1921, that rate was established to both Phoenix and Prescott. All of these rates were reduced on July 1, 1922, to 86.5 cents.

In *United Verde Mining Co.* v. *A., T. & S. F. Ry. Co.,* 88 I. C. C. 5, the rates on classes and commodities, including sugar, from California, among

other origin territories, to Clarkdale were found unreasonable to the extent that they exceeded the contemporaneous rates to Drake, and on October 16, 1922, the rate on sugar from California to Clarkdale was reduced from $1.16 to 86.5 cents.

In *Sugar Cases of 1922,* 81 I. C. C. 448, fourth-section relief authorized in *Fourth Section Violations in Rates on Sugar, supra,* permitting lower rates to Chicago, Ill., and other points in the Middle

Exhibit No. 3, p. 4. [251]

(175) West than to intermediate points, was withdrawn. In the revision following this decision the rate to Chicago, minimum 80,000 pounds, became 84 cents, and this rate was established at intermediate points, including Gallup and main-line Southern Pacific and Santa Fe points in Arizona, but in connection with a minimum of 60,000 pounds. The same rate and minimum were established to Phoenix, Prescott, and Clarkdale.

In our original report in No. 14449 we again considered the rate from California points to Phoenix and found it to have been and to be unreasonable to the extent that it exceeded 79 and 71 cents, respectively, prior and subsequent to July 1, 1922. Reparation was awarded on that basis. The 71-cent rate was established to Phoenix and to intermediate points on the Southern Pacific and on the route of the Santa Fe over the Parker cut-off, effective February 25, 1925. In our original report in No. 14140, *Solomon-Wickersham Co.* v. *S. M. V. R. R. Co.,* 101 I. C. C. 667, reopened and here before us

on argument, the rate on sugar from California points to Bowie was found to have been and to be unreasonable to the extent that it exceeded 83 and 75 cents, respectively, before and after July 1, 1922. Reparation was awarded on that basis. The reduced rate was established to Bowie and to Tucson, an intermediate point, effective October 27, 1925. The reduction to Bowie was 9 cents, and on the date named the Southern Pacific made reductions of the same amount to Safford and Globe, resulting in rates of 80.5 and 85.5 cents, respecively. No change was made in the Clifton rate of 94.5 cents.

Summarized, the present rates, minimum 60,000 pounds, are 71 cents to Yuma and Phoenix, 75 cents to Tucson and Bowie, 80.5 cents to Safford, 84 cents to Kingman, Williams, Flagstaff, Winslow, Holbrook, Prescott, Clarkdale, Bisbee, Douglas, and Gallup, 85.5 cents to Globe, and 94.5 cents to Clifton.

The general transportation conditions from California to Arizona are fully discussed in the cases cited and also in *Arizona Corporation Commission* v. *A. E. R. R. Co.,* 113 I. C. C. 52, and will not be further discussed here. The latter case has since been reopened. In *Arizona Cattle Growers Asso.* v. *A. Ry. Co.,* 101 I. C. C. 181, division 4 approved of prescribed rates on cattle, in carloads, from points in Arizona to points in California which were approximately 20 per cent higher than the corresponding rates for like distances in Oklahoma and Texas. The same level of rates was approved or prescribed in that case from branch-line as from main-line points in Arizona.

In Nos. 16742, 16770, and 16770 (Sub-Nos. 1 to 9) counsel asks reparation on shipments to Phoenix on the basis of 71 cents, and contends that rates to the other destinations should be graded like (176)

Exhibit No. 3, p. 5. [252]

the rate to Bowie prescribed in the first report in No. 14149, or else that there should be reasonable groupings. In Nos. 17549, 17549 (Sub-No. 1), and 17466 counsel contends that the origin group should be divided into two parts, the first to include Los Angeles, Dyer, Los Alamitos, San Pedro, and Oxnard, and the second San Francisco, Betteravia, Spreckles, Tracy, Alvarado, and Crockett. The principal counsel in the latter cases is also counsel for complainants in No. 16770 (Sub-Nos. 6, 7, and 8). The rates now suggested from the proposed southern group are 54 cents to Phoenix, Tucson, and Clarkdale, 59 cents to Bisbee, and 64 cents to Clifton, and rates 10 cents higher from the proposed northern group.

The rate of 71 cents to Phoenix prescribed in the original report in No. 14449 was based on a distance of 625 miles, which is approximately one-half of the sum of the short-line distances from Los Angeles and San Francisco. Reference was made in that report to the fact that under the distance scale on sugar prescribed in *Memphis-Southwestern Investigation,* 77 I. C. C. 473, for application in the general territory comprising Louisiana west of the Mississippi River, Arkansas, and southern Missouri, the rate for 625 miles is 58 cents. The rate of 71 cents prescribed is about 121 per cent of 58 cents.

The rates proposed by complainants are lower than 121 per cent of the Memphis-Southwestern scale, and in justification thereof complainants point to the fact that the minimum weight prescribed in connection with that scale is 36,000 pounds, as compared with 60,000 pounds under the rates assailed. In *Oklahoma Traffic Asso.* v. *A. G. S. R. R. Co.*, 113 I. C. C. 635, the Memphis-Southwestern scale was prescribed on sugar from New Orleans, La., and points in Louisiana taking the same rates, and from Sugarland and Texas City, Tex., to points in Oklahoma, subject to a minimum of 60,000 pounds.

Defendants are opposed to a disturbance of the origin grouping and to grading of rates at destination. They contend that because of the competitive situation the present origin and destination groupings are of advantage to producers and distributors of sugar. However, if the rates are to be graded at destination they favor breaking up the origin blanket into two groups. Defendants subscribe to a basis of rates from California to Arizona which is about 121 per cent of the rates for the same distances under the Memphis-Southwestern scale, provided that the rates to Arizona points are based upon the weighted-average haul.

As stated, the only California points at which cane sugar is refined are San Francisco and Crockett. The southern California distributors of beet sugar stock a limited amount of cane sugar in order to fill orders for mixed carloads containing certain

Exhibit No. 3, p. 6. [253]

varieties of sugar (177) not obtainable at beet-sugar refineries. The production of beet sugar in California during 1925 was as follows:

Producing point	Quantity	Producing point	Quantity
Dyer	9,095	Tracy	8,297
Los Alamitos	2,010	Alvarado	9,580
Oxnard	15,310		
Betteravia	18,559	Total	92,917
Spreckles	30,066		

The production at the southern California points of Dyer, Los Alamitos, and Oxnard was 28.43 per cent of the total production for the State during 1925. In addition there was a substantial movement of sugar by water to San Pedro, Calif.

During the past several years, due to blight, drought, and the use for other purposes of land formerly planted in beets, there has been a substantial diminution in the amount of beet sugar produced in southern California and, as a consequence, a reduction in the number of refineries. The following table, giving movements from California refineries on the Southern Pacific to destinations in Arizona and New Mexico and to El Paso, shows that there has been a substantial reduction, both in the volume of movement from southern California to the territory of destination described and in the ratio such tonnage bears to the tonnage from northern California:

		Northern California			Southern California	
	Cars	Tons	Per cent	Cars	Tons	Per cent
Year 1921	187	5,920	24	265	8,519	76
Year 1922	188	5,920	39.4	265	8,423	70.6
Year 1923	247	7,754	72.9	67	2,129	27.1
Year 1924	313	9,856	86	44	1,415	14
Year 1925	504	15,615	95.5	23	714	4.5

In addition to the above there were shipments of sugar from San Francisco over the Santa Fe to destinations on its own line west of Albuquerque. In 1925 they amounted to 107 cars, weighing 3,029 tons. This additional tonnage changes the percentages for 1925 to 96.3 per cent from northern California and 3.7 per cent from southern California. Of the total of 611 cars from northern California, 227 moved from San Francisco and 370 from Crockett. The weight of the shipments from these two points aggregated 18,490 tons. Only 14 cars moved from other northern California points, of which 11 moved from Spreckels and 3 from Betteravia.

We have upon this record no serious contention from producers, distributors, or consumers that a breaking up of the present extensive (178)

Exhibit No. 3, p. 7. [254]

origin and destination groupings would be detrimental to their interests. Bearing in mind the length of time during which the present California group has existed and the fact that until recent years the movement has been substantial from both northern and southern California, we do not find that group as such to have been or to be unreasonable; but in view of the fact that most of the movement now is from two of the most distant points of shipment, an origin group approximately 500 miles in length is no longer justified. A more reasonable adjustment for the future would seem to require the breaking up of the origin territory into two groups,

the northern group extending from San Francisco and Crockett on the north to Spreckels on the south, and the southern group extending from Betteravia on the north to Dyer on the south.

Since the hearings in these cases we have decided *Consolidated Southwestern Cases*, 123 I. C. C. 203, in which new distance scales of rates were prescribed for application on classes and commodities generally throughout the Southwest. The scale on sugar prescribed in those cases, hereinafter referred to as the southwestern scale, is 30 per cent of the first-class rates therein prescribed and will apply in connection with a minimum weight of 60,000 pounds. The following table shows the average short-line distances from the southern and northern groups to points or groups of destination and compares the rates proposed by certain of complainants with rates on basis of 120 per cent of the southwestern scale for like distances:

	From southern group			From northern group		
	Distance	Complainants' proposed rates	120% of southwestern rates	Distance	Complainants' proposed rates	120% of southwestern rates
	Miles	*Cents*	*Cents*	*Miles*	*Cents*	*Cents*
From Group 1 to Yuma, Ariz.	267	40	45.5	637	50	72
From Group 2 to Kingman, Ariz.	388	47	56.5	645	57	73
From Group 3 to Phoenix, Ariz.	467	55	61	749	65	79
From Group 4 to—						
Tucson, Ariz.	519			847		
Prescott, Ariz.	526			782		
Williams, Ariz.	527			783		
Flagstaff, Ariz.	561			818		
Clarkdale, Ariz.	563			820		
Group average	539	55	65	810	65	83
From Group 5 to—						
Winslow, Ariz.	619			876		
Bisbee, Ariz.	628			956		
Bowie, Ariz.	634			961		
Douglas Ariz.	643			971		
Holbrook, Ariz.	652			909		
Group average	635	59	72	935	69	89
From Group 6 to—						
Safford, Ariz.	674	60	74.5	1,001	70	92.5
From Group 7 to—						
Gallup, N. Mex.	747			1,004		
Clifton, Ariz.	753			1,081		
Globe, Ariz.	758			1,085		
Group average	752	64	79	1,057	74	95

Exhibit No. 3, p. 8. [255]

(179) No. 16670 (Sub-No. 7) brings in issue the reasonableness of the rates from Colorado and Kansas refineries to Gallup, and contains a prayer for reparation on shipments subsequent to March 31, 1923. Prior to June 25, 1918, the rate on sugar from transcontinental Group E, which includes New Orleans, to Pacific coast points was 85 cents, minimum 60,000 pounds, and this rate applied as maximum from Kansas and Colorado points. The general increases and reduction resulted in rates from Colorado and Kansas, respectively, to Arizona points on the Santa Fe of $1.195 and $1.28, the difference resulting from general increases of 25 and 33⅓ per cent, respectively, from Colorado and Kansas on August 26, 1920. At the time of the hearing the fifth-class rate of $1.145 was applicable on sugar from Colorado refineries to Gallup. At that time a commodity rate of 75 cents applied from Colorado points to Albuquerque, and on August 1, 1925, the present commodity rate of 84 cents, minimum 60,000 pounds, was established from the same points to Gallup. The present rate to Albuquerque is 76 cents, and the same rate applies from Denver and Pueblo, Colo., to El Paso. To Fort Worth, Tex., the rate is 72 cents, minimum 36,000 pounds.

The record fails to show any movement, actual or prospective, from Kansas, and the rates from that State will not be further considered.

The Colorado points of origin are shown by complainant at including Denver, Fort Collins, Greeley, Holly, Lamar, Longmont, Loveland, Las Animas, Lupton, Rocky Ford, Swink, and Windsor. The Santa Fe, which is the only carrier serving the

Colorado group named as defendant herein, carries rates to points on its line in Arizona and New Mexico only from Holly, Lamar, Las Animas, Rocky Ford, and Swink. The average distance from the group to Gallup is shown by complainants as 625 miles. Complainant in No. 16670 (Sub-No. 7) showed only seven shipments from Colorado to Gallup since March 31, 1923, six from Swink, and one from Rocky Ford.

The rates herein prescribed under section 1 will remove any undue prejudice which may exist in the rates assailed, and no findings with respect to the allegations under section 3 are necessary.

The evidence shows that all of the complainants, except the C. N. Cotton Company, made or received shipments of sugar as described, and paid and bore the charges thereon.

Defendants call attention to the fact that in our original report in No. 14449 we awarded reparation on shipments which moved to Phoenix on a rate 0.5 cent less than the rate prescribed as reasonable by us from and to the same points in *Phoenix Chamber of Commerce* (180) v. *Director General*, 140 I. C. C.

Exhibit No. 3, p. 9. [256]

supra, referred to as the first Phoenix case, and that the period of reparation in the former case extended back approximately four months prior to the date when the latter case was decided. Defendants contend that they should not be required to pay reparation on shipments which moved under rates approved or prescribed by us. We have sev-

eral times announced that the doctrine of *res adjudicata* is not applied by us. *Goss* v. *Director General,* 73 I. C. C. 649. We reserve the right, upon a more comprehensive record, to modify our previous findings, whether in the same or a previous case, upon matters directly in issue before us as to which it clearly appears that our previous findings would not accord substantial justice under the laws which we administer. We have such a case here. For the first time the record before us is comprehensive in the evidence which it contains bearing upon the reasonableness of the rates assailed. Upon this record we reach the conclusion that the rate prescribed in the first Phoenix case, during the period embraced in these complaints, was unreasonable and that a lower rate would have been reasonable during that period. If we are within our authority in finding that a lower rate would have been reasonable, then it must follow that shippers who paid the freight charges at the higher rate paid charges which were unreasonable, and are entitled to reparation upon adequate proof that they paid or bore such charges.

We find that the assailed rate, minimum 60,000 pounds, from Holly and other Santa Fe points in Colorado grouped therewith to Gallup was, is, and will be unreasonable to the extent that it exceeded, exceeds, or may exceed 72 cents. We further find that the assailed rates, minimum 60,000 pounds, from California points were, are, and will be unreasonable to the extent that they exceeded, exceed,

or may exceed, respectively, the following, in cents per 100 pounds:

Prior to July 1, 1922, to Phoenix 79 cents from the southern California group and 81 cents from the northern California group and to Bowie 83 cents from the southern California group and 93 cents from the northern California group; on and between July 1, 1922, and the effective date of the rates herein prescribed for the future, from the southern California group and the northern California, group, respectively, 66 and 66 cents to Yuma, 68 and 69 cents to Kingman, 71 and 73 cents to Phoenix, 73 and 77 cents to Prescott, Williams, Tucson, Flagstaff, and Clarkdale, 75 and 84 cents to Winslow, Holbrook, Bisbee, Bowie, and Douglas, 77 and 87 cents to Safford, and 79 and 89 cents to Gallup, Clifton, and Globe; and for the future as follows:

140 I. C. C.

Exhibit No. 3, p. 10. [257]

(181)

To—	From southern California group	From northern California group	To—	From southern California group	From northern California group
	Cents	*Cents*		*Cents*	*Cents*
Yuma, Ariz.	46	66	Bisbee, Ariz.	72	84
Kingman, Ariz.	57	69	Bowie, Ariz.	72	84
Phoenix, Ariz.	61	73	Douglas, Ariz.	72	84
Tucson, Ariz.	65	77	Holbrook, Ariz.	72	84
Prescott, Ariz.	65	77	Safford, Ariz.	75	87
Williams, Ariz.	65	77	Gallup, N. Mex	79	89
Flagstaff, Ariz.	65	77	Clifton, Ariz.	79	89
Clarkdale, Ariz.	65	77	Globe, Ariz.	79	89
Winslow, Ariz.	72	84			

We further find that complainants, except the C. N. Cotton Company, made shipments as described at the rates herein found to have been unreasonable; that they paid and bore the charges thereon and were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found to have been reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice. No reparation orders have been issued in Nos. 14449 and 14140, and complainants in those cases should submit to the carriers new statements in compliance with Rule V referred to.

Our original order in No. 14449 and the order of division 3 in No. 14140 will be modified in conformity with the foregoing conclusions, and appropriate orders for the future will be entered in other cases disposed of in this report.

TAYLOR, *Commissioner,* concurring in part:

I dissent from so much of this report as finds the rates unreasonable in the past and awards reparation.

Commissioner PORTER did not participate in the disposition of this case.

140 I. C. C.

Exhibit No. 3, p. 11. [258]

ORDERS

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of March, A. D. 1928

No. 16770

Bashford-Burmister Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 1)

Central Commercial Company

v.

Same

No. 16770 (Sub-No. 2)

Wheeler Perry Company

v.

Santa Maria Valley Railroad Company and Southern Pacific Company

No. 16770 (Sub-No. 3)

T. F. Miller Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Elctric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 4)

E. F. Sanguinetti

v.

Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

(1)

Exhibit No. 3, p. 12. [259]

No. 16770 (Sub-No. 5)

Arizona Grocery. Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

No. 16770 (Sub-No. 6)

Arizona Wholesale Grocery Company

v.

Arizona Eastern Railroad Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

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No. 16770 (Sub-No. 7)

C. N. Cotton Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Pacific Electric Railway Company; Rio Grande, El Paso and Santa Fe Railroad Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

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No. 16770 (Sub-No. 8)

Babbitt Brothers Trading Company; Arizona Stores Company; Babbitt Brothers Company; and Babbitt Brothers

v.

Same

No. 16770 (Sub-No. 9)

Wm. H. Dagg Mercantile Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

---

No. 17549

Phelps, Dodge Mercantile Company

v.

The Atchison, Topeka & Santa Fe Railway Company; El Paso & Southwestern Railroad Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

(II)

Exhibit No. 3, p. 13. [260]

No. 17549 (Sub-No. 1)

Baffert & Leon

v.

The Atchison, Topeka & Santa Fe Railway Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

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No. 17466

United Verde Extension Mining Company

v.

Same

No. 17781

Simpson-Ashby Company

v.

Southern Pacific Company

These cases being at issue upon complaints, as amended, and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to points in Arizona, referred to in the next succeeding paragraph hereof, and to Gallup, N. Mex., and from points in Colorado, referred to in the second succeeding paragraph hereof, to Gallup, which shall exceed the rates hereinafter prescribed.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner

prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, from the following California groups, as defined in the report made a part hereof, to the Arizona and New Mexico destinations named below, rates, minimum weight 60,000 pounds, which shall not exceed the following, in cents per 100 pounds:

(III)

Exhibit No. 3, p. 14. [261]

To—	From southern California group	From northern California group	To—	From southern California group	From northern California group
	Cents	*Cents*		*Cents*	*Cents*
Yuma, Ariz.	46	66	Bisbee, Ariz.	72	84
Kingman, Ariz.	57	69	Bowie, Ariz.	72	84
Phoenix, Ariz.	61	73	Douglas, Ariz.	72	84
Tucson, Ariz.	65	77	Holbrook, Ariz.	72	84
Prescott, Ariz.	65	77	Safford, Ariz.	75	87
Williams, Ariz.	65	77	Gallup, N. Mex.	79	89
Flagstaff, Ariz.	65	77	Clifton, Ariz.	79	89
Clarkdale, Ariz.	65	77	Globe, Ariz.	79	89
Winslow, Ariz.	72	84			

It is further ordered, That said defendants in No. 16670 (Sub-No. 7), according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, from Holly, Lamar, Rocky Ford, and Swink, Colo., and other points on the Atchison, Topeka & Santa Fe Railway in Colorado taking the same rates, to Gallup, N. Mex., a rate which shall not exceed 72 cents per 100 pounds, minimum weight 60,000 pounds.

And it is further ordered, That these orders shall continue in force until the further order of the commission.

SUPPLEMENTAL ORDERS

No. 1449

Traffic Bureau of the Phoenix Chamber of Commerce; Haas-Baruch & Company; Hall-Pollock Company; The Melczer Company; and James A. Dick Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Arizona Eastern Railroad Company

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No. 14140

Solomon-Wickersham Company

v.

Santa Maria Valley Railroad Company and Southern Pacific Company

These cases having been reopened for oral argument jointly with No. 16742, *Traffic Bureau of the Phoenix Chamber of Commerce et al.* v. *A. T. & S. F. Ry. Co. et al.*, and cases consolidated therewith, and such oral argument having been had, and

the commission having, on the date hereof, made and filed a new report containing its findings of fact

(IV)

Exhibit No. 3, p. 15. [262]

and conclusions thereon, which said report, together with the previous reports herein, 95 I. C. C. 244 and 101 I. C. C. 667, are hereby referred to and made a part hereof:

It is ordered, That the order entered in No. 14449 on January 6, 1925, and the order entered in No. 14140 on July 17, 1925, be, and they are hereby, modified so that the second and third paragraphs thereof will read, respectively, as follows:

It is ordered, That the above-named defendants in No. 14449, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding or collecting rates for the transportation of sugar, in carloads, from points in California to Phoenix, Ariz., which shall exceed the rates prescribed in the next succeeding paragraph hereof.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, rates

to Phoenix, Ariz., minimum weight 60,000 pounds, which shall not exceed 61 cents per 100 pounds from points in southern California group, as defined in the report of this date made a part hereof, and 73 cents per 100 pounds from points in the northern California group, as defined in the said report.

It is ordered, That the above-named defendants in No. 14140, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to Bowie, Ariz., which shall exceed the rates prescribed in the next succeeding paragraph hereof.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, rates to Bowie, Ariz., minimum weight 60,000 pounds, which shall not exceed 72 cents per 100 pounds from the southern California Group, as defined in the report of this date made a part hereof, and 84 cents per 100 pounds from the northern California group, as defined in the said report.

And it is further ordered, That these supplemental orders shall continue in force until the further order of the commission.

By the commission.

[Seal] GEORGE B. McGINTY,
Secretary.

(V)

U. S. Government Printing Office: 1928

Exhibit No. 3, p. 16. [263]

Counsel for both parties thereupon filed a written stipulation signed by all of said counsel agreeing upon procedure to be followed and agreeing to submit the causes upon the records with certain exceptions; said stipulation reading as follows:

(Title of Court and Cause—Nos. L.-695 and L.-696—Phoenix.)

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled actions, and by and between their respective attorneys and counsel that:

1. The foregoing actions shall be submitted to the trial court for decision upon the record in said actions, as made by the filing of the agreed statement of facts executed by the parties under date of January 8, 1930, and by the introduction in evidence of the order of the Interstate Commerce Commission in I. C. C. Docket No. 16,742, under date of March 11, 1929 (a copy of said order being annexed to each of the complaints herein and marked Exhibit "C"), and upon argument of counsel upon the record so made.

2. In the event that said court shall decide that upon the record as so made, judgments in said causes should be entered in favor of the defendants, plaintiff shall have the right, within ten days after notice of such decision, to serve and file a motion for a further hearing of said causes, for the purpose of offering testimony on behalf of plaintiff respecting the reasonableness, at the times of their assessment, of the rates assessed and collected upon plaintiff's shipments referred to in detail upon the statements annexed to the complaints in said causes and marked Exhibit "A."

3. Defendants will not oppose such motion for further hearing, but shall have the right to make objection to any and all of such further testimony upon any and all grounds which may seem proper to them. [264]

4. In the event that the court shall decide, upon the record as made, that judgments should be entered for the plaintiffs in said causes, either party shall have the right upon ten days' notice, and as soon thereafter as the issue may be heard, to introduce testimony respecting the amount of the attorneys' fees to be allowed by the Court to plaintiffs' attorneys and counsel.

ELLIOTT & SNELL,
Attorneys for Plaintiff.
BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants.

The defendants had theretofore filed written requests for special findings of fact by the Court.

Thereupon, pursuant to said stipulations plaintiff did offer a copy of an order of the Interstate Commerce Commission dated March 11, 1929, which without objection was admitted in evidence as Plaintiff's Exhibit "A"; and plaintiff introduced two instruments showing shipments and amount of reparations claimed by it, which without objection were admitted in evidence as Plaintiff's Exhibits "B" and "C" respectively. Plaintiff and defendants introduced no further evidence on that day. Plaintiff's Exhibits "A," "B" and "C," so introduced in evidence are as follows: [265]

PLAINTIFF'S EXHIBIT "A."

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, Held at its office in Washington, D. C., on the 11th day of March, A. D. 1929.

No. 16742.

Traffic Bureau of Phoenix Chamber of Commerce, et al.,

vs.

The Atchison, Topeka & Santa Fe Railway Company, et al.

It appearing, That on March 12, 1928, the commission entered its report in the above entitled proceeding, which report is hereby referred to and made a part hereof, and this proceeding now coming on for further consideration on the question of

reparation, and the parties having filed agreed statements with respect to the shipments in question, showing, among other things, the dates on which payment of the charges assailed was made; we find that complainant is entitled to awards of reparation from the defendants named in the following table, in the amounts set opposite their respective names, with interest.

Defendants	Amounts
The Atchison, Topeka & Santa Fe Railway Company	$2,203.55
Bay Transport Company, and The Atchison, Topeka & Santa Fe Railway Company	1,251.02
Southern Pacific Company, and The Atchison, Topeka & Santa Fe Railway Company	297.04
Southern Pacific Company	2,104.58
Santa Maria Valley Railroad Company, and Southern Pacific Company	359.75

It is therefore ordered, That the defendants, named in each of the groups shown in the above table, be, and they are hereby, authorized and directed to pay unto the complainant, Arizona Grocery Company, on or before April 26, 1929, the amounts set opposite their respective names in said table, with interest thereon at the rate of six per cent per annum, from the respective dates of payment of the charges assailed shown in the aforesaid agreed statements, as reparation on account of unreasonable rates charged for the transportation of numerous carloads of sugar, from California points

to destinations in Arizona and from California and Colorado points to Gallup, N. Mex.

By the commission.

(Seal) GEORGE B. McGINTY,
Secretary.

[Endorsed]: Pltfs. Exhibit *No.* "A" Admitted and Filed January 8, 1930. C. R. McFall, Clerk. By J. Lee Baker, Chief Deputy Clerk. Case No. L.-695—Phx. and L.-696-Phx. Arizona Grocery Co. vs. So. Pac. Co. et al. [266]

PLAINTIFF'S EXHIBIT "B."

CLAIM No. 805-1

Claim No. 805-1 of the Arizona Grocery Company, Under the Decision of the Interstate Commerce Commission in Docket No. 16742—on Sugar Carloads—Destination, Phoenix, Arizona.

Date Shipt.	Date Chgs. Paid	Car Init.	Car No.	Origin (Calif.)	Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via Southern Pacific Ry.						
1923.	1923.									
2-22	3- 1	CM&StP	87286	Crockett	60789	86½	525.82	73	443.76	82.06
3-13	3- 2	GH&SA	50987	San Fran.	60896	86½	526.75	73	444.54	82.21
3-20	3-28	SP	87745	"	60813	86½	526.03	73	443.93	82.10
4-25	5- 2	SP	35005	"	60788	86½	525.82	73	443.75	82.07
5-12	5-19	SP	27309	"	60838	86½	526.25	73	444.12	82.13
6-27	7-10	SP	16940	"	81023	86½	700.85	73	591.47	109.38
9-14	9-20	SP	26505	Oxnard	60450	86½	522.89	71	429.20	93.69
9-19	9-26	SP	35048	San Fran.	60838	86½	526.25	73	444.12	82.13
10-11	10-18	SP	21533	Oxnard	60450	86½	522.89	71	429.20	93.69

Date Shipt.	Date Chgs. Paid	Car Init.	Car No.	Origin (Calif.)	Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via Southern Pacific Ry.						
1924.	1924.									
2- 5	2-12	CGW	29228	Oxnard	60450	84	507.78	71	429.20	78.58
3-22	3-28	SP	16776	San Fran.	60750	84	510.30	73	443.48	66.82
3-29	4- 9	SP	29047	"	60782	84	510.67	73	443.71	66.86
4-11	4-17	NYC	248647	"	60940	84	511.90	73	444.86	67.04
6-14	6-20	NYC	51840	Crockett	60651	84	509.47	73	442.75	66.72
6-24	7- 2	SP	28501	San Fran.	60964	84	512.10	73	445.04	67.06
6-25	7- 2	SP	81424	Crockett	60678	84	509.70	73	442.95	66.75
8-16	8-25	Sou.	135043	"	60657	84	509.52	73	442.80	66.72
8-28	9- 2	SP	16630	"	60733	84	510.16	73	443.35	66.81
9-18	9-24	SP	81461	"	60690	84	509.80	73	443.04	66.76
9-25	10- 1	LW	32523	"	60677	84	509.69	73	442.94	66.75
11- 5	11-14	MKT	68173	San Fran.	61253	84	514.53	73	447.15	67.38
11-13	11-18	SP	30000	Crockett	60679	84	509.70	73	442.96	66.74
12- 1	12- 8	SP	28487	"	60640	84	509.38	73	442.67	66.71

Date Shipt.	Date Chgs. Paid	Car Init.	Car No.	Origin (Calif.)	Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via Southern Pacific Railway						
1924.	1924.									
12- 3	12- 9	SP	30791	San Fran.	60669	84	509.62	73	442.88	66.74
12-15	12-22	SP	21267	Crockett	90707	84	761.94	73	662.16	99.78
1925.	1925.									
1- 7	1-13	SP	29825	San Fran.	60983	84	512.25	73	445.18	67.07
1-14	1-19	SP	27862	"	60890	84	511.48	73	444.50	66.98
1-29	2- 4	SSW	27113	Crockett	60676	84	509.68	73	442.93	66.75
1923.	1923.			**Routed via S. M. V. R. R. Co.—S. P. Co.**						
9-16	9-20	SP	16564	Betteravia	60450	86½	522.89	71	429.20	93.69
9-28	10- 5	LW	32484	"	60450	86½	522.89	71	429.20	93.69
10- 9	10-16	SP	87173	"	60450	86½	522.99	71	429.20	93.79
1924.	1924.									
6-16	6-23	GH	50670	"	60450	84	507.78	71	429.20	78.58
						Totals	$16,929.67		$14,465.44	$2464.23

With Accrued Interest.

ARIZONA GROCERY COMPANY, Claimant.

By ROLAND JOHNSTON, Attorney,
Room 14—Arizona Fire Building,
Phoenix, Arizona, April 16, 1928.

[Endorsed]: Pltf's Exhibit *No.* "B." Admitted and Filed January 8, 1930. C. R. McFall, Clerk. By J. Lee Baker. Chief Deputy Clerk. Case No. L.-695—Phx. and L.-696—Phx. Arizona Gro. Co. vs. So. Pac. Co. et al. [268]

PLAINTIFF'S EXHIBIT "C."

CLAIM No. 806-2.

Claim No. 806-2 of the Arizona Grocery Company, Under the Decision of the Interstate Commerce Commission in Docket No. 16742—on Sugar Carloads—Destination, Phoenix, Arizona.

Date Shipt.	Date of Collection	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via A. T. & S. F. Ry. Co.						
1923.	1923.									
2-24	2-26	AT	26966	San FR.	60450	86½	522.89	73	441.29	81.60
7-25	7-31	AT	36212	"	61152	86½	528.96	73	446.41	82.55
8-30	9- 6	AT	116775	"	60758	86½	525.56	73	443.53	82.03
10- 4	10- 9	AT	34714	"	60819	86½	526.08	73	443.98	82.10
11-16	11-21	AT	43738	"	61093	86½	528.45	73	445.98	82.47
11-23	11-30	AT	63696	"	68450	86½	592.09	73	499.69	92.40
12- 1	12- 7	AT	116509	"	61115	86½	528.84	73	446.14	82.50

Shipt.	Collection	Init.	No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Separation
				Routed via A. T. & S. F. Ry. Co.						
1924.	1924.									
1- 2	1- 7	AT	116055	San Fr.	60725	86½	525.27	73	443.29	81.98
1-11	1-17	AT	118045	"	61316	84	515.05	73	447.61	67.44
1-16	1-21	AT	39566	"	83955	84	705.22	73	612.87	92.35
1-18	1-24	AT	46224	"	60619	84	509.20	73	442.52	66.68
1-25	1-30	AT	27562	"	60715	84	510.01	73	443.22	66.79
2- 4	2- 8	AT	32233	"	60770	84	510.47	73	443.62	66.85
2-20	2-26	AT	116304	"	60832	84	510.99	73	444.07	66.92
3-20	3-24	AT	118181	"	61224	84	514.28	73	446.94	67.34
5-17	5-22	AT	116599	"	61009	84	512.48	73	445.37	67.11
6- 3	6- 9	AT	117726	"	61195	84	514.08	73	446.72	67.36
7- 7	7-14	AT	116356	"	60732	84	510.15	73	443.34	66.81
7-29	8- 4	AT	46535	"	61065	84	512.95	73	445.77	67.18
8-23	8-28	AT	38975	"	60959	84	512.06	73	445.00	67.06
9- 4	9- 9	AT	35968	"	60770	84	510.47	73	443.62	66.85
9-24	9-29	AT	117847	"	60915	84	511.69	73	444.68	67.01
1923.	1923.									
2- 6	2-13	AT	33480	"	60625	86½	524.41	73	442.56	81.85

us. Arizona Grocery Co.

Date Shipt.	Date of Collection	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via A. T. & S. F. Ry. Co.						
1924.	1924.									
9–27	10– 3	AT	116476	San Fran.	60713	84	509.99	73	443.20	66.79
11–21	11–28	AT	65098	"	60871	84	511.32	73	444.36	66.96
12–27	12–31	AT	63603	"	60812	84	510.82	73	443.93	66.89
	1925.									
12–29	1– 3	AT	130017	"	80905	84	679.60	73	590.61	88.99
1925.	1925.									
1–22	1–25	AT	36086	"	61222	84	514.26	73	446.92	67.34
1–30	2– 4	AT	65112	"	60512	84	508.30	73	441.74	66.56
2– 3	2– 6	AT	43806	"	60700	84	509.88	73	443.11	66.77
2– 5	2–10	AT	47163	"	60737	84	510.19	73	443.38	66.81
1923.	1923.				Routed via B. T. Co., San Francisco AT. SF. Ry. Co.					
2–16	2–23	NYC	246308	Crockett	60456	86½	522.90	73	441.33	81.57
2–28	3– 6	AT	26875	"	60450	86½	522.90	73	441.29	81.61
5– 9	5–15	AT	27269	"	60450	86½	522.90	73	441.29	81.61
6– 1	6– 7	AT	32244	"	61138	86½	528.84	73	446.31	82.53
6–14	6–19	AT	34050	"	60751	86½	525.50	73	443.48	82.02
7–31	8– 7	AT	27200	"	60717	86½	525.21	73	443.23	81.98

Date Shipt.	Date of Collection	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
				Routed via B. T. Co., San Francisco A. T. S. Ry. Co.						
1923.	1923.									
8- 9	8-15	AT	49701	Crockett	60717	86½	525.21	73	443.23	81.98
8-22	8-29	AT	48544	"	83093	86½	718.75	73	606.58	112.17
9-28	10- 4	AT	38360	"	60690	86½	524.79	73	443.04	81.93
12-14	12-19	NOTM	2480	"	60781	86½	525.75	73	443.70	82.05
1924.	1924.									
2-20	2-26	AT	33637	"	60882	84	511.41	73	444.44	66.97
3- 3	3- 7	AT	33848	"	60986	84	512.29	73	445.20	67.09
5- 1	5- 6	AT	35949	"	60966	84	512.12	73	445.05	67.07
6-28	7- 2	AT	63056	"	60690	84	509.80	73	443.04	66.76
8-14	8-19	AT	31198	"	60809	84	510.80	73	443.91	66.89

Date Shipt.	Date of Collection	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
				Routed via S. P. Bay Point A. T. & S. F. Ry. Co.						
1923. 4–30	1923. 5– 7	SP	35299	Crockett	60737	86½	525.38	73	443.38	82.00
12–29	1924. 1– 4	DIW	38646	"	60723	86½	525.25	73	443.28	81.97
1924. 2– 3	1924. 2–11	SSW	25848	"	60692	84	509.81	73	443.05	66.76
				Routed via S. P. Los Angeles, A. T. & S. F. Ry.						
2–20	2–28	CM&StP	92364	Spreckles	60450	84	507.78	73	441.29	66.49
						Totals.....	$26483.38		$22731.59	$3751.79

With Accrued Interest.

THE ARIZONA GROCERY COMPANY, Claimants.

By ROLAND JOHNSON, Attorney,

Room 14, Arizona Fire Building, Phoenix, Arizona, April 16, 1928.

[Endorsed]: Pltf.'s Exhibit *No.* "C." Admitted and Filed January 8, 1930. C. R. McFall, Clerk. By J. Lee Baker, Chief Deputy Clerk. Case No. L.-695—Phx. and L.-696—Phx. Arizona Gro. Co. vs. So. Pac. Co. et al.

Pursuant to stipulations and upon the agreed statement of facts, counsel for each of the parties orally argued their respective points and the Court took the causes under advisement, and thereafter each of the parties filed briefs with the court, and thereafter, to wit, on the 19th day of May, 1930, the Court rendered and entered an order overruling defendants' demurrers in said causes, to which order and ruling the said defendants did then and there in open court duly except; and the Court announced that he was of the opinion that after the final submission of the causes plaintiff would be entitled to recover.

Thereafter, and on the 23d day of June, 1930, and pursuant to stipulation and agreement of the parties to the actions, each of the said parties introduced testimony respecting the amount of attorney's fees to be allowed by the Court to plaintiff's attorneys, and to support its contentions as to attorneys' fees the plaintiff offered the following testimony, to wit:

TESTIMONY OF FRANK L. SNELL, FOR PLAINTIFF.

My name is Frank L. Snell, Junior, and I am a member of the firm of Elliott & Snell, attorneys for the plaintiff in the two cases numbered L.–695 and L.–696. I believe, as an attorney, and being familiar with all of the facts, the attorneys' fees in the total amount of $2,500.00 for both cases, which has been asked for, is reasonable. The total amount involved in the two cases is approximately $9,000.00.

(Testimony of Frank L. Snell.)

Cross-examination.

The total amount of the principal involved in case L.–695—Phoenix is $3,751.61, without interest. The interest on that amount up to July 31, 1929, is $1,237.80, and since said last-mentioned date interest has accumulated [272] to the extent of about $250.00 and according to my calculation the total amount of principal and interest due up to this present date in case L.–695—Phoenix is $5,239.41. In case No. L.–696—Phoenix, the principal amount is $2,464.33, and interest on said amount to the 31st day of July, 1929, is $798.38, and since said last-mentioned date approximately $125.00 additional interest has accrued up to this date, making approximately $3,387.61 principal and interest due in case L.–696—Phoenix, and approximately a total amount of $8,627.02 principal and interest due in the two cases. The attorneys' fees asked by us in the complaints amount to about 29% of the total amount involved. The form of the complaints in the two cases is identical, except for the exhibits and the items of the shipments involved. I did not get the form of the complaint out of the statute. I should say that these complaints are considerably different from a suit on a promissory note. We were not required to try the cases in court on facts as there was an agreed statement. The agreed statement was first submitted by attorneys for defendants and we examined the same and submitted additions, corrections, and amendments. The attorneys' fees which we ask in our complaints is not in contemplation of an appeal that may be taken.

(Testimony of Samuel White.)

To-day is my second formal appearance in court in reference to these cases, but I have been over here at other times relative to getting motions assigned for hearing. The majority of my time on these cases was not spent in court, but on briefs and other preparations. This is the first case of this kind our firm of attorneys has tried in a court.

TESTIMONY OF SAMUEL WHITE, FOR PLAINTIFF.

My name is Samuel White and I am an attorney of this court, and have been interested in several reparation [273] cases. I am more or less familiar with these cases No. L.-695—Phoenix and L.-696—Phoenix, and have examined the pleadings, briefs, and other documents pertaining to the same and have discussed the matter many times with counsel for the plaintiff. I think I am familiar enough with the cases to qualify to testify as to the reasonableness of attorneys' fees. Considering the amount of work that is necessary in cases of this kind and the preparation of briefs and the work that I know counsel has put in on this case I consider the sum of $2,500.00 a reasonable attorneys' fee for the two cases.

Cross-examination.

To some extent I have collaborated with Mr. Snell in the preparation of these cases and gave him the benefit of experiences I had in prior cases of a like nature, in which I have been interested.

Thereupon plaintiff rested.

TESTIMONY OF SAMUEL WHITE, FOR PLAINTIFF (RECALLED).

Mr. WHITE was recalled by the Court and upon questions by the Court testified as follows: About two years ago I had two cases similar to the present one in which something like $24,000.00 was involved and your Honor allowed me $5,000.00 attorneys' fees for the two cases which was a little less than 20% of the amount involved. In those cases the amount involved was not taken into consideration so much as the work that was necessary in the preparation and the handling of the case; and those cases were of the same kind and character as the present one. In arriving at attorneys' fees the Court should consider the amount involved, but in my opinion, that should not be the only basis of arriving at attorney' fees.

Upon questions by Mr. WHITNEY, one of the attorneys for the defendants, Mr. WHITE testified: I have handled a few mortgage foreclosures in my time and for a man who is familiar with the preparing of complaints of such character [274] as in L.-695 and L.-696 it would not require any more skill to prepare the complaint than it would to properly foreclose a mortgage, but the preparation of the complaint is not all there is to these cases by any means. Sometimes in mortgage foreclosures the preparation of the complaint is not all the work involved. Ten per cent (10%) is usually the sum provided in the mortgage contract for attorney's

(Testimony of A. B. Mason.)

fees in the event of foreclosure where the amount of the mortgage is $10,000.00 and upwards.

Upon a question by Mr. SNELL, attorney for plaintiff, Mr. WHITE testified: In my experience I have not found that the foreclosure of mortgages requires anything like as much labor, effort and skill as the present cases.

The defendants upon their part offered the following testimony, to wit:

TESTIMONY OF A. B. MASON, FOR DEFENDANTS.

My name is A. Burton Mason. I reside at San Francisco, and am a practicing attorney of the State of California, and of the United States District Courts therein, and of the Circuit Court of Appeals for the Ninth Circuit, and am also a registered practitioner before the Interstate Commerce Commission and before the Board of Tax Appeals. I am one of the attorneys for defendant in these cases. I have been admitted to the bar since 1921 and have been a member of the legal staff of the Southern Pacific Company for a little more than four years with the title of "Commerce Attorney." Prior to that time I was associated for approximately five years with the firm of McCutchen, Olney, Mannon & Greene, a legal firm in San Francisco, practising in many fields of law, including to a large extent prosecution of cases before the Interstate [275] Commerce Commission and before the State and Federal Courts arising out of the In-

(Testimony of A. B. Mason.)

terstate Commerce Act and related statutes. While I was in that office my time was most particularly devoted to Interstate Commerce matters. I have been counsel on both sides—for both shippers and carriers—in several actions of the same character as these present cases, and I am familiar with the fees had and allowed in such cases and also with the proceedings taken in the same. From my experience in these cases I would say that the professional service required of plaintiff's attorneys included the preparation of two simple complaints, substantially identical in form, except as to figures and the exhibits; and such complaints are no more difficult to prepare than the ordinary form of complaint on a promissory note. As to the exhibits listing the shipments, those were prepared long before the cases were brought, being the ordinary Rule V statements to the Interstate Commerce Commission. I do not believe that any extended investigation was required preliminary to the preparation of the complaints. Following the filing and service of these complaints plaintiff's attorneys conferred briefly with our local attorneys respecting further proceedings, but as far as I know prior to the former hearing of the case they were not required to prepare any other papers or documents. Answers and demurrers were prepared and filed by attorneys for defendants, who also offered to submit the cases upon an agreed statement of facts, and prepared a draft of such statement of facts which was submitted to plaintiff's attorneys. Plaintiff's attorneys examined that brief and sug-

(Testimony of A. B. Mason.)

gested minor corrections; and a conference was had with Mr. Snell at which the agreed statement of facts was finally drawn up and agreed upon. I prepared the defendants' brief, and carefully read the brief submitted by plaintiff. [276]

If I was called upon to render an opinion concerning income tax, involving the examination of law equal to that in preparing the briefs filed in this case, I would gauge my services according to amount involved. I recently successfully prosecuted a proceedings before the Treasury Department and Board of Tax Appeals, involving income taxes amounting to the principal sum of approximately $5,250.00, which required an investigation of law which I imagine is tantamount to that required of Mr. Snell in this case. I have not had a great deal of experience before the Board of Tax Appeals—possibly my experience is equal to Mr. Snell's before the Interstate Commerce Commission, or before this court in Interstate Commerce cases. The fee which I assessed and expect to be paid by my clients is $800.00. The proceeding required a trip on my part from San Francisco to Washington, and two trips from San Francisco to New York City. My fee does not include my expenses and the same are to be added. I think that 20% of the amount involved is a grossly excessive attorneys' fee in cases of this kind, and I think 10% is adequate and 15% extortionate. Outside of the preparation of briefs and the argument counsel was required to do practically nothing, and it must be admitted that plaintiff's counsel had the

(Testimony of A. B. Mason.)

benefit of the briefs prepared in the Gillespie cases, which had theretofore been handled by Mr. Samuel White. I read the brief in the Gillespie cases and plaintiff's brief in this case, and they read together pretty well. Plaintiff's counsel admit that he collaborated with Mr. White. Plaintiff's counsel states that he had to make an extended investigation of the law because this was his first experience in this field of the law, but I do not believe that defendant should be called upon to pay for education of plaintiff's counsel. In the Gillespie cases, [277] which were handled by Mr. Samuel White, and involved reparations similar to these cases: in one of such cases there was a judgment for $7,269.71 and a fee of $1500.00 was allowed, and in the second of such cases judgment was rendered for $19,062, and a fee of $3,500.00 was allowed. The Gillespie cases were really cases of first impression, as distinguished from the instant cases. Mr. Snell has been required actually to make only two court appearances in these cases, and I think that the ordinary fee for a court appearance is $100.00 a day where the attorney is not required to leave the city in which he resides; and I think that under the circumstances of these present cases, 10% of the amount involved or the sum of $850.00 would certainly be adequate compensation for counsel for the plaintiff. I may say that in my experience in California as an associate with counsel for shippers who are interested in similar cases, that in one case that I definitely recall, the amount involved was approximately $10,500, and the attorneys' fee asked

(Testimony of A. B. Mason.)

and allowed was $1,000.00. That case involved approximately the same character of labor as involved in the present cases. Our firm of attorneys with which I was associated always pride ourselves on the fact we had no real competition. In bringing an action of this kind the facts upon which the complaint is based are all set forth in a formal order issued by the Interstate Commerce Commission, except the necessary corporate identities of the plaintiff and defendants, and the assertion that the shipments were made. The fundamental facts are set forth in the Commission's supplemental order, which was introduced in evidence by the plaintiff in this case as Exhibit "A," and is an order dated March 11, 1929, which declares certain sums to be due. To each complaint is annexed Exhibit "A," which is nothing more than a transcript of a statement sent to the [278] Interstate Commerce Commission following its decision, and upon which its order for the payment of reparation is based. It is what is known as a Rule V statement. These statements are made up by the shipper himself. Counsel probably had nothing to do with the preparation of same. In this case I am certain the statements were made up by Mr. Johnston, and he gets the information from the shipper's freight bills, and from the decision of the Commission. It would be wholly unnecessary for counsel to prepare these exhibits.

Cross-examination.

I am familiar with the brief filed by attorneys for defendants. The following is a correct state-

(Testimony of A. B. Mason.)

ment made in the brief of the defendants filed in these cases:

> "The issues presented to the court in these cases are of major importance, not only to the parties immediately before the court, but to all shippers and carriers generally. While the sum at stake here is relatively inconsiderable, the principles involved are of commanding importance. The Commission's jurisdiction under the Act, and the constitutionality of the Statute, as construed by the Commission for the purpose of the order upon which these suits are based, present issues in which every common carrier engaged in interstate commerce, and every person who makes use of the carriers' facilities, is vitally interested."

Any statements made in the brief are over my signature and I take them to be true. The principles involved in these cases are of commanding importance; and as to question of the Commission's jurisdiction, certainly the carriers engaged in Interstate Commerce are vitally interested, and I suppose every person who makes use of the carriers' facilities is vitally interested, although the sum at stake is relatively inconsiderable. The same point is involved in this case as was involved in Docket 19516 before the Interstate Commerce Commission, in which I prepared a petition for rehearing, which is largely reproduced in my brief in this case; and plaintiff's opening brief in this case is to a [279] great extent a copy of the able brief

(Testimony of A. B. Mason.)

prepared by Mr. Samuel White in the Gillespie cases, involving a like point. This case presents one phase which is slightly different from that presented in the Gillespie cases, but as to the major issues, which are the Commission's power to award reparations against its own rates, and the constitutionality of the act in case that power is given by it, the issues here are precisely the same as in the Gillespie cases in which I was associated. I put in a great deal more labor on the instant case than I did on the Gillespie cases, for the reason that other counsel did the preliminary briefing in the Gillespie cases. [280]

TESTIMONY OF THOMAS G. NAIRN, FOR DEFENDANTS.

My name is Thomas G. Nairn; I am an attorney of the State of Arizona and of this court and have been practicing in Arizona for about fifteen years, and am of counsel for the Santa Fe in this case. I am familiar with the work which has been done in this case, and I have heard the testimony of Mr. Mason who just preceded me. I agree with his statement of the facts of labor performed. Based upon my experience as an attorney before this court, and in cases which I have represented the Santa Fe, and taking into account my experience and the amount involved, and all other relevant facts which are within my knowledge, I consider 10% of the amount re-

(Testimony of Thomas G. Nairn.)

covered to be an exceedingly reasonable attorneys' fee in these cases.

Cross-examination.

In determining the amount of fees in these cases, I take into consideration the amount involved and the time which should be spent on the case, also the necessity for quick action. I am reasonably familiar with this character of case. These cases are handled by the head officers of the respective railroads, and we are merely associated as counsel and we do not take the laboring oar, but I am reasonably familiar with them. I was all through this case from the beginning with Mr. Snell and I was in the conference as to stipulation as to facts. I think Mr. Snell and I have probably had more to do with one another about these cases, than any of the other attorneys.

(Mr. Gerald E. Duffy, an attorney of San Francisco, California, and Mr. L. B. Whitney, attorney of Phoenix, Arizona, were both present in court; and in order to save time, counsel for both parties then and there stipulated in open court that Mr. Duffy is Commerce Attorney of the Santa Fe, at San Francisco, [281] California, and Mr. Whitney is one of the attorneys for Southern Pacific Company, at Phoenix, Arizona, and that if said gentlemen were called as witnesses to testify, they would show that they had sufficient qualification to enable them to testify, and that they would testify substantially along the same lines as Mr. Nairn.)

Defendants rested and the testimony was closed. And thereupon the Court stated that he had read

the briefs filed in the cases and that they are very voluminous and show a great deal of research, and that 10% would be wholly inadequate and that he considered 20% of the amount involved to be a reasonable attorneys' fee for the amount of labor involved, and did then and there render and enter an order allowing plaintiff's attorney 20% of the principal and interest in each case, or a total of $1,725.40 in the two cases as attorneys' fees, when and if judgments are rendered for plaintiff. To the Court's said order, ruling, and finding, the defendants then and there in open court duly excepted. Thereupon the Court ordered special findings to be proposed, and withheld judgment until the settlement of such findings.

Thereafter the plaintiff did file written request for special findings of fact and conclusions of law by the Court; and the defendants did file written objections and exceptions to such findings of fact and conclusions of law requested by the plaintiff; and the defendants did file written special findings of fact and conclusions of law requested by them.

Thereafter, to wit, on the 11th day of July, 1930, the Court did, in open court, hear such proposed findings and exceptions thereto and defendants did then and there by their counsel request the Court by written instrument, and also orally in open court, to find the following facts and conclusions of law, to wit: (Paragraphs are numbered according to the written special findings of fact and [282] conclusions of law requested by defendants and on file in the causes.)

6. On the 22d day of June, 1921, in a proceeding before the Interstate Commerce Commission known as Docket 11532, entitled "Traffic Bureau, Phoenix, Chamber of Commerce, et al., complainants, v. Director General, et al., defendants" (to which proceeding Arizona Grocery Company, a co-partnership, predecessor in interest of the plaintiff herein, was a party complainant) upon a complaint alleging that the rates on sugar in carloads from points in California (including all points in said State referred to in said list of shipments hereinbefore set forth) to Phoenix had been, were, and in the future would be unreasonable in violation of the Interstate Commerce Act, said Commission after due hearing and investigation duly made and rendered its opinion and order in said proceeding dated June 22d, 1921, which said opinion is reported in Volume 62, I. C. C. Reports, at pages 412 and following. Said report and order were and are as follows:

(Same as Exhibit No. 1 annexed to agreed statement of facts, and reference is hereby made to said Exhibit.)

Thereafter the defendants in said proceeding before said Commission, including the defendants in these causes and their connecting carriers, duly and regularly filed and published their tariffs effective September 17, 1921, complying with the Commission's order in said Docket No. 11532, and naming a rate of 96 cents per hundred pounds on sugar, in carloads, from

points in California to Phoenix, Arizona, which said rate was one-half cent less than the rate of 96½ cents per hundred pounds found not unreasonable for the future by said Commission in said Docket No. 11532.

Said rate of 96 cents per 100 pounds remained in effect until on or about July 1, 1922, upon which date, in accordance with the recommendations made by said Commission in a report in a proceeding known as Docket No. 13293, Reduced Rates, 1922 reported in Volume 68, I. C. C. Reports, at pages 676 and following, said rate of 96 cents was voluntarily reduced to 86½ cents per hundred pounds; said last-mentioned rate of 86½ cents per hundred pounds was named in tariffs of said defendants herein, and of other carriers engaged in Interstate Commerce, and was duly and regularly filed with the Interstate Commerce Commission in accordance with law.

Said last-mentioned rate of 86½ cents per hundred pounds remained in effect until on or about January 10, 1924, upon which date the same was voluntarily reduced to 84 cents per hundred pounds; said last-mentioned rate of 84 cents was duly and regularly established by these defendants and by other common carriers engaged in interstate commerce, and was named in tariffs duly and regularly filed in accordance with law. [283]

Said rates of 86½ cents per hundred pounds and 84 cents per hundred pounds were the rates

which were successfully in effect, and assessed upon complainant's shipments during the period of movement thereof. Said rates are the rates referred to "as charged" upon said list of shipments hereinbefore set forth.

which request was denied by the Court, and the Court refused to find such facts as so requested, and the Court modified, changed, and altered defendants' request; and the defendants by their counsel then and there duly excepted to the ruling of the Court in failing to find such facts as requested and in modifying, changing, and altering said request.

7. Said last-mentioned rate of 84 cents per hundred pounds remained in effect until February 25, 1925, upon which date the same was reduced to 71 cents per hundred pounds, pursuant to and in compliance with certain findings and orders made by said Commission in a proceeding known as Docket No. 14449, reported in Volume 95, I. C. C. Reports, at pages 244, and following, in which proceeding the Traffic Bureau of the Phoenix Chamber of Commerce, and certain others were complainants, and in which proceedings said complainants alleged that the rates on sugar from points in California, including the points of origin of the shipments of plaintiff herein, to Phoenix, Arizona, had been, were, and in the future would be, unreasonable. Said report and order of said Commission in said proceeding, Docket No. 14449, were and are as follows:

(Same as Exhibit No. 2 annexed to agreed statement of facts, and reference is hereby made to said Exhibit.)

In compliance with said Commission's order in said Docket No. 14449, the defendants therein, including the defendants in these causes, established, on or about February 25, 1925, a rate of 71 cents per 100 pounds on sugar, in carloads, from all points in California to Phoenix, Arizona, which said rate was duly and regularly published in tariffs filed with said Commission, in accordance with law.

which request was denied by the Court, and the Court refused to find such facts as so requested, and the Court modified, changed, and altered defendants' request; and the defendants by their counsel then and there duly excepted to the ruling of the Court in failing to find such facts as requested and in [284] modifying, changing, and altering said request.

8. Thereafter and on February 8, 1927, said Interstate Commerce Commission reopened said proceeding, Docket No. 14449, upon petition of the defendants therein, for oral argument jointly with a subsequent proceeding brought by the Traffic Bureau of the Phoenix Chamber of Commerce and certain others (including plaintiff) as complainants, and known as Docket No. 16742.

In said last-mentioned proceeding, Docket No. 16742, said Commission, on March 12, 1928, made and rendered its opinion and order, re-

ported in Volume 140 of I. C. C. Reports, at pages 171 and following, finding that the rates on sugar, in carloads, from points in California designated as the northern California group (which said group includes, among other points, San Francisco, Crockett, and Spreckels) to Phoenix, Arizona, had in the past been unreasonable to the extent that they exceeded 81 cents prior to July 1, 1922, and 73 cents on and after said last-mentioned date, and that said rates on sugar from points in California designated as the Southern California group (which said group includes, among other points, Betteravia and Oxnard, California) to Phoenix, Arizona, had in the past been unreasonable to the extent that they exceeded 79 cents prior to July 1st, 1922, and 71 cents on and after said date; and that certain of the complainants in said proceeding (including plaintiff herein) had made shipments at the rates found in said proceeding to have been unreasonable; that they had paid and borne the charges thereon and were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates found in said proceeding to have been reasonable; and that said complainants were entitled to reparation, with interest. Said report and order of said Commission in said Docket No. 16742, were and are as follows:

(Same as Exhibit No. 3 annexed to agreed statement of facts, and reference is hereby made to said Exhibit.)

Said list of shipments hereinbefore set forth shows in detail, as previously stated, the charges actually assessed upon plaintiff's shipments involved in these causes, in accordance with the tariffs duly published and in effect at the dates of movement, and the charges which would have accrued thereon, upon the basis of the rates declared by said Commission in said last-mentioned report and order to have been the reasonable rates to have been applied at said dates of movement, together with the differences between the charges so assessed and those which would have accrued, which said last-mentioned differences constitute the amounts herein claimed by the plaintiff, exclusive of interest, and fees of its attorneys and counsel.

which request was denied by the Court, and the Court refused [285] to find such facts as so requested, and the Court modified, changed, and altered defendants' request; and the defendants by their counsel then and there duly excepted to the ruling of the Court in failing to find such facts as requested and in modifying, changing, and altering said request.

CONCLUSIONS OF LAW.

1. That the rates and charges assessed and collected upon plaintiff's said shipments, as shown upon said list above set forth, were published and collected by authority of a formal continuing order of the Interstate Commerce

Commission, and had previously been established and declared by said Commission to be not unreasonable, after formal investigation and/or were less in amount than rates which had been specifically prescribed and declared by said Commission to be not unreasonable after such formal investigation,

which request was denied by the Court, and such conclusion was refused; and the defendants by their counsel then and there duly excepted to the ruling of the Court in failing to find such conclusion of law, and in denying such request.

2. That said order of said Interstate Commerce Commission dated the 11th day of March, 1929, purporting to order and direct these defendants to pay reparation to the plaintiff with respect to its said shipments hereinbefore listed, is null and void and of no effect, because said Commission was and is without lawful jurisdiction and authority under the Interstate Commerce Act to make said order, for the following reasons:

(a) Said Interstate Commerce Act does not vest said Commission with jurisdiction and authority to award reparation with respect to charges collected upon the basis of rates which said Commission has theretofore specifically prescribed or approved as reasonable and just for the future by a formal continuing order, or with respect to charges collected upon the basis of rates which are less in amount than

rates so prescribed and/or approved as just and reasonable.

(b) If said Act were so construed as to confer such jurisdiction and authority upon said Commission, it would to that extent be unconstitutional, and any and all orders made in pursuance of said purported jurisdiction would likewise be unconstitutional and void, because contrary to and forbidden by the Fifth Amendment to the United States Constitution, and particularly those portions of said Amendment which guarantee that no person shall be deprived of property without due process of law. [286]

which request was denied by the Court, and such conclusion was refused; and the defendants by their counsel then and there duly excepted to the ruling of the Court in failing to find such conclusion of law, and in denying such request.

3. That the plaintiff has failed to establish by the evidence any cause of action whatever against the defendants, or any of them, and has failed to establish that any unreasonable or unlawful rate or charge was collected upon any of its said shipments, or that any reparation whatsoever is due or payable with respect to said shipments, or any of them.

which request was denied by the Court, and such conclusion was refused; and the defendants by their counsel then and there duly excepted to the ruling of the Court in failing to find such conclusion of law, and in denying such request.

4. That the plaintiff is not entitled to recover any amount whatsoever as and for fees of its attorneys and counsel in these causes.

which request was denied by the Court, and such conclusion was refused; and the defendants by their counsel then and there duly excepted to the ruling of the Court in failing to find such conclusion of law, and in denying such request.

5. That the defendants are entitled to judgment against the plaintiff, that the plaintiff take nothing by its causes of action, or either of them, and that the complainants herein be dismissed.

Wherefore, defendants pray that the Court render and enter judgment in their favor in each of the causes above named in accordance herewith.

which request was denied by the Court, and the Court refused to find such conclusion of law, and refused to render or enter judgment in favor of the defendants; and the defendants by their counsel then and there duly excepted to the ruling of the Court in failing to find such conclusion of law and in denying such request, and in failing to render judgment in favor of the defendants.

Thereupon, the Court did then and there in open court find the facts and conclusions of law as follows, which were afterwards reduced to writing and filed by the Court in the causes in the following words and form, to wit: [287]

(Title of Court and Cause—Nos. L.-595 and L.-596—Phoenix.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

These causes were, by written agreement of the parties, duly filed, consolidated for purposes of trial and decision, and were jointly tried upon a consolidated record by the Court on the 8th day of January, 1930, a trial by jury having been duly waived by written stipulation of the parties. Plaintiff and defendants, by and through their respective attorneys and counsel, filed with the Court a written agreed statement of facts; and plaintiff offered certain documentary testimony in support of its complaint; and, pursuant to stipulation, the parties subsequently, on the 23d day of June, 1930, offered certain oral testimony with respect to the matter of the fees to be allowed to plaintiff's attorneys and counsel; and the Court was duly requested in writing to make, enter, and file special findings of fact in said causes, prior to rendering judgment.

The Court does hereby make and file the following as its findings of fact and conclusions of law:

FINDINGS OF FACT.

1. Plaintiff now is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Arizona, and qualified to do business in said State.

2. Defendants Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company, and Santa Maria Valley Railroad Company now

are, and at all times herein mentioned have been, corporations duly organized and existing as such, and engaged in the operation of lines of railroad, pursuant to the authority of law, as common carriers for hire, and in the transportation of property by means of their lines of railroad and in conjunction with their conjunction with their connecting carriers, in interstate commerce from points in the State of California to points in the State of Arizona. [288]

Defendant Bay Transport Company now is, and at all times herein mentioned was, a corporation duly organized and existing as such, and engaged in the transportation of freight by water, in interstate commerce, as a connection of the railroad corporations hereinbefore referred to.

3. Heretofore, and at various dates between the 6th of February, 1923, and the 10th day of February, 1925, said plaintiff shipped or caused to be shipped from San Francisco, Crockett, Oxnard, Betteravia, and Spreckels, California, to Phoenix, Arizona, over the lines of said defendants, eighty-two carload shipments of sugar; that said shipments are severally set forth upon the following list, which correctly shows in detail the dates upon which said shipments were made, the dates upon which the charges for the transportation thereof were collected, the car initials and numbers of the cars in which the same were loaded and transported, the several points of origin thereof, the several weights of said shipments, the rates thereon assessed, and the charges thereon collected, the rates subsequently found by the Interstate Commerce

Commission to have been reasonable, and the accounts which would have accrued under said last-mentioned rates (said last-mentioned rates and amounts being shown under the columns headed "as should be"), and the amount of reparation claimed by the plaintiff and allowed by said Commission with respect to each of said shipments:

The following is a list of shipments involved in Cause No. L.–695: [289]

Claim No. 806-2 of the Arizona Grocery Company, Under the Decision of the Interstate Commerce Commission in Docket No. 16742—on Sugar, Carloads—Destination, Phoenix, Arizona.

Date Shipt.	Date of Collection	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via A. T. S. F. Ry. Co.						
1923	1923									
2-24	2-26	AT	26966	San Francisco	60450	86½	522.89	73	441.29	81.60
7-25	7-31	AT	36212	San Fran.	61152	86½	528.96	73	446.41	82.55
8-30	9-06	AT	116775	"	60758	86½	525.56	73	443.53	82.03
10- 4	10- 9	AT	34714	"	60819	86½	526.08	73	443.98	82.10
11-16	11-21	AT	43738	"	61093	86½	528.45	73	445.98	82.47
11-23	11-30	AT	63696	"	68450	86½	592.09	73	499.69	92.40
12- 1	12- 7	AT	116509	"	61115	86½	528.84	73	446.14	82.50
1924	1924									
1- 2	1- 7	AT	116055	"	60725	86½	525.27	73	443.29	81.98
1-11	1-17	AT	118045	"	61316	84	515.05	73	447.61	67.44
1-16	1-21	AT	39566	"	83955	84	705.22	73	612.87	92.35

Date Shipt.	Date of Collection	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Separation.
				Routed via A. T. S. F. Ry. Co.						
1924	1924									
1–18	1–24	AT	46224	San Fran.	60619	84	509.20	73	442.52	66.68
1–25	1–30	AT	27562	"	60715	84	510.01	73	443.22	66.79
2– 4	2– 8	AT	32233	"	60770	84	510.47	73	443.62	66.85
2–20	2–26	AT	116304	"	60832	84	510.99	73	444.07	66.92
3–20	3–24	AT	118181	"	61224	84	514.28	73	446.94	67.34
5–17	5–22	AT	116599	"	61009	84	512.48	73	445.37	67.11
6– 3	6– 9	AT	117726	"	61195	84	514.08	73	446.72	67.36
7– 7	7–14	AT	116356	"	60732	84	510.15	73	443.34	66.81
7–29	8– 4	AT	46535	"	61065	84	512.95	73	445.77	67.18
8–23	8–28	AT	38975	"	60959	84	512.06	73	445.00	67.06
9– 4	9– 9	AT	35968	"	60770	84	510.47	73	443.62	66.85
9–24	9–29	AT	117847	"	60915	84	511.69	73	444.68	67.01
[290]										
1923	1923									
2– 6	2–13	ATZ	33480	San Fran.	60625	86½	524.41	73	442.56	81.85

The following is a list of shipments involved in Cause No. L.-695.

Date Shipt.	Date of Collection	Car Init.	Car No.	Point of Origin (Calif.)	Weight	Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via A. T. S. F. Ry. Co.						
1924	1924									
9-27	10- 3	AT	116476	San Francisco	60713	84	509.99	73	443.20	66.79
11-21	11-28	AT	65098	"	60871	84	511.32	73	444.36	66.96
12-27	12-31	AT	63603	"	60812	84	510.82	73	443.93	66.89
	1925									
12-29	1- 3	AT	130017	"	80905	84	679.60	73	590.61	88.99
1925	1925									
1-22	1-25	AT	360.86	"	61222	84	514.26	73	446.92	67.34
1-30	2- 4	AT	65112	"	60512	84	508.30	73	441.74	66.56
2- 3	2- 6	AT	43806	"	60700	84	509.88	73	443.11	66.77
2- 5	2-10	AT	47163	"	60737	84	510.19	73	443.38	66.81

Date Shipt.	Date of Collection	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
				Routed via B. T. Co., San Francisco AT. SF. Ry.Co.						
1923	1923									
2–16	2–23	NYC	246308	Crockett	60456	86½	522.90	73	441.33	81.57
2–28	3– 6	AT	26875	"	60450	86½	522.90	73	441.29	81.61
5– 9	5–15	AT	27269	"	60450	86½	522.90	73	441.29	81.61
6– 1	6– 7	AT	32244	"	61138	86½	528.84	73	446.31	82.53
6–14	6–19	AT	34050	"	60751	86½	525.50	73	443.48	82.02
7–31	8– 7	AT	27200	"	60717	86½	525.21	73	443.23	81.98
8– 9	8–15	AT	49701	"	60717	86½	525.21	73	443.23	81.98
8–22	8–29	AT	48544	"	83093	86½	718.75	73	606.58	112.17
9–28	10– 4	AT	38360	"	60690	86½	524.79	73	443.04	81.93
12–14	12–19	NOTM	2480	"	60781	86½	525.75	73	443.70	82.05
1924	1924									
2–20	2–26	AT	22637	"	60882	84	511.41	73	444.44	66.97
3– 3	3– 7	AT	33848	"	60986	84	512.29	73	445.20	67.09
5– 1	5– 6	AT	35949	"	60966	84	512.12	73	445.05	67.07

Date Shipt.	Date of Collection	Car Init.	Car No.	Point of Origin (Calif.)	Weight	As Collected Rate	As Collected Amt.	As Should be Rate	As Should be Amt.	Reparation
				Routed via B. T. Co., San Francisco AT. SF. Ry. Co.						
1924	1924									
6-28	7- 2	AT	63056	Crockett	60690	84	509.80	73	443.04	66.76
8-14	8-19	AT	31198	"	60809	84	510.80	73	443.91	66.89
				Routed via S. P. Bay Point A. T. & S. F. Ry. Co.						
1923	1923									
4-30	5- 7	SP	35299	Crockett	60737	86½	525.38	73	443.38	82.00
	1924									
12-29	1- 4	DIW	38646	"	60723	86½	525.25	73	443.28	81.97
1924	1924									
2- 3	2-11	SSW	25848	"	60692	84	509.81	73	443.05	66.76
				Routed via S. P. Los Angeles, A. T. & S. F. Ry.						
2-20	2-28	CM&St.P.	92364	Spreckles	60450	84	507.78	73	441.29	66.49
							$26483.38		$22731.59	$3751.79

[291]

The following is a list of shipments involved in Cause No. L.–696.

Claim No. 805–1 of the Arizona Grocery Company, Under the Decision of the Interstate Commerce Commission in Docket No. 16742—on Sugar Carloads—Destination, Phoenix, Arizona.

Date Shipt.	Date Chgs. Paid	Car Init.	Car No.	Origin (Calif.)	Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via Southern Pacific Ry.						
1923	1923									
2–22	3– 1	CM&St.P	87286	Crockett	60789	86½	525.82	73	443.76	82.06
3–13	3– 2	GH&SA	50987	San Fr.	60896	86½	526.75	73	444.54	82.21
3–20	3–28	SP	87745	"	60813	86½	526.03	73	443.93	82.10
4–25	5– 2	SP	35005	"	60788	86½	525.82	73	443.75	82.07
5–12	5–19	SP	27309	"	60838	86½	526.25	73	444.12	82.13
6–27	7–10	SP	16940	"	81023	86½	700.85	73	591.47	109.38
9–14	9–20	SP	26505	Oxnard	60450	86½	522.89	71	429.20	93.69
9–19	9–26	SP	35048	San Fr.	60838	86½	526.25	73	444.12	82.13
10–11	10–18	SP	21533	Oxnard	60450	86½	522.89	71	429.20	93.69

Date Shipt.	Date Chgs. Paid	Car Init.	Car No.	Origin (Calif.)	Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Repara-tion.
				Routed via Southern Pacific Ry.						
1924	1924									
2- 5	2-12	CGW	29228	Oxnard	60450	84	507.78	71	429.20	78.58
3-22	3-28	SP	16776	San Fr.	60750	84	510.30	73	443.48	66.82
3-29	4- 9	SP	29047	"	60782	84	510.67	73	443.71	66.86
4-11	4-17	NYC	248647	"	60940	84	511.90	73	444.86	67.04
6-14	6-20	NYC	51840	Cro'kt	60651	84	509.47	73	442.75	66.72
6-24	7- 2	SP	28501	San Fr.	60964	84	512.10	73	445.04	67.06
6-25	7- 2	SP	81424	Crckt.	60678	84	509.70	73	442.95	66.73
8-16	8-25	Sou.	135043	"	60657	84	509.52	73	442.30	66.72
8-28	9- 2	SP	16630	"	60733	84	510.16	73	443.35	66.81
9-18	9-24	SP	81461	"	60690	84	509.80	73	443.04	66.76
9-25	10- 1	LW	32523	"	60677	84	509.69	73	442.94	66.75
11- 5	11-14	MK&T	68173	San Fr.	61253	84	514.53	73	447.15	67.38
11-13	11-18	SP	30000	Crckt.	60679	84	509.70	73	442.96	66.74
12- 1	12- 8	SP	28487	"	60640	84	509.38	73	442.67	66.71

Date Shipt.	Date Chgs. Paid	Car Init.	Car No.	Origin (Calif.)	Weight	As Charged Rate	As Charged Amt.	As Should be Rate	As Should be Amt.	Reparation.
				Routed via Southern Pacific Ry.						
1924	1924									
12– 3	12– 9	SP	30791	San Fr.	60669	84	509.62	73	442.88	66.74
12–15	12–22	SP	21267	Crckt.	90707	84	761.94	73	662.16	99.78
1925	1925									
1– 7	1–13	SP	29825	San Fr.	60983	84	512.25	73	445.18	67.07
1–14	1–19	SP	27862	"	60890	84	511.48	73	444.50	66.98
1–29	2– 4	SSW	27113	Crckt.	60676	84	509.68	73	442.93	66.75
1923	1923			Routed via S. M. V. R. R. Co.—S. P. Co.						
9–16	9–20	SP	16564	Bttrava	60450	86½	522.89	71	429.20	93.69
9–28	10– 5	LW	32484	"	60450	86½	522.89	71	429.20	93.69
10– 9	10–16	SP	87173	"	60450	86½	522.99	71	429.20	93.79
1924	1924									
6–16	6–23	GH	50670	"	60450	84	507.78	71	429.20	78.58
				Total, ...			$16,929.67		$14,465.44	2464.23

4. On the 22d day of June, 1921, in a proceeding before the Interstate Commerce Commission known as Docket 11,532, entitled "Traffic Bureau, Phoenix Chamber of Commerce, et al., complainants, v. Director General, et al., defendants" (to which proceeding Arizona Grocery Company, a copartnership, predecessor in interest of the plaintiff herein, was a party complainant), upon a complaint alleging that the rates on sugar in carloads from points in California (including all points in said state referred to in said list or shipments hereinbefore set forth) to Phoenix had been, were, and in the future would be unreasonable in violation of the Interstate Commerce Act, said Commission after due hearing and investigation duly made and rendered its opinion and order in said proceeding dated June 22d, 1921, which said opinion is reported in volume 62, I. C. C. Reports, at pages 412 and following. Said report and order fixed a maximum rate of 96½¢ per hundred pounds on sugar in carloads from points in California, including all points in said state referred to in said list of shipments hereinbefore set forth to Phoenix, Arizona. Thereafter the defendants in said proceedings before said Commission, including the defendants in these causes and their connecting carriers, duly and regularly filed and published their tariffs effective September 17, 1921, and naming a rate of 96 cents per hundred pounds on sugar, in carloads, from points in California to Phoenix, Arizona, which said rate was one-half cent less than the rate of 96½ cents per hundred pounds found as

a maximum rate for the future by said commission in said Docket No. 11,532.

Said rate of 96 cents per 100 pounds remained in effect until on or about July 1, 1922, upon which date, in accordance with the recommendations made by said Commission in a report in a proceeding known as Docket No. 13,293, Reduced Rates 1922, reported in Volume 68, I. C. C. Reports, at pages 676 and following, said rate of 96 cents was voluntarily reduced [293] to 86½ cents per hundred pounds; said last-mentioned rate of 86½¢ per hundred pounds was named in tariffs of said defendants herein, and of other carriers engaged in interstate commerce, and was duly and regularly filed with the Interstate Commerce Commission in accordance with law.

Said last-mentioned rate of 86½ cents per hundred pounds remained in effect until on or about January 10, 1924, upon which date the same was voluntarily reduced to 84 cents per hundred pounds; said last-mentioned rate of 84 cents was duly and regularly established by these defendants, and was named in tariffs duly and regularly filed in accordance with law.

Said rates of 86½ cents per hundred pounds and 84 cents per one hundred pounds were the rates which were successively in effect, and assessed upon complainant's shipments during the period of movement thereof. Said rates are the rates referred to "as charged" upon said list of shipments hereinbefore set forth.

5. Said last-mentioned rate of 84 cents per hundred pounds remained in effect until February 25, 1925, upon which date the same was reduced to 71 cents per 100 pounds, pursuant to and in compliance with certain findings and orders made by said Commission in a proceedings known as Docket No. 14,449, reported in Volume 95, I. C. C. Reports, at pages 244 and following, in which proceeding the Traffic Bureau of the Phoenix Chamber of Commerce, and certain others were complainants, and in which proceedings said complainants alleged that the rates on sugar from points in California, including the points of origin of the shipments of plaintiff herein, to Phoenix, Arizona, had been, were, and in the future would be, unreasonable.

In compliance with said Commission's order in said Docket No. 14,449, the defendants therein, including the defendants in these causes, established, on or about February 25, [294] 1925, a rate of 71 cents per 100 pounds on sugar, in carloads, from all points in California to Phoenix, Arizona, which said rate was duly and regularly published in tariffs filed with said Commission, in accordance with law.

6. Thereafter and on February 8, 1927, said Interstate Commerce Commission reopened said proceeding, Docket No. 14,449, upon petition of the defendants therein, for oral argument jointly with a subsequent proceedings brought by the Traffic Bureau of the Phoenix Chamber of Commerce and certain others (including plaintiff) as complainants, and known as Docket No. 16,742.

In said last-mentioned proceedings, Docket No. 16,742, said Commission, on March 12, 1928, made

and rendered its opinion and order, reported in Volume 140 of I. C. C. Reports, at pages 171 and following, finding that the rates on sugar, in carloads, from points in California designated as the northern California group (which said group includes, among other points, San Francisco, Crockett, and Spreckels) to Phoenix, Arizona, had in the past been unreasonable to the extent that they exceeded 81 cents prior to July 1, 1922, and 73 cents on and after said last-mentioned date, and that said rates on sugar from points in California designated as the southern California group (which said group includes, among other points, Betteravia, and Oxnard, California) to Phoenix, Arizona, had in the past been unreasonable to the extent that they exceeded 79 cents prior to July 1st, 1922, and 71 cents on and after said date; and that certain of the complainants in said proceeding (including plaintiff herein) had made shipments at the rates found in said proceeding to have been unreasonable; that they had paid and borne the charges thereon and were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates found in said proceeding to have been reasonable; and that said complainants were entitled to reparation, with interest. [295] Said list of shipments hereinbefore set forth shows in detail, as previously stated, the charges actually assessed upon plaintiff's shipments involved in these causes, in accordance with the tariffs duly published and in effect at the dates of movement, and the charges which would have accrued thereon, upon the basis

of the rates declared by said Commission in said last-mentioned report and order to have been the reasonable rates to have been applied at said dates of movement, together with the differences between the charges so assessed and those which would have accrued, which said last-mentioned differences constitute the amounts herein claimed by the plaintiff, exclusive of interest, and fees of its attorneys and counsel.

7. That said freight charges assessed plaintiff on the list of shipments hereinbefore set forth, same being the shipments involved in these causes, were and are unreasonable to the plaintiff and in violation of the Interstate Commerce Act of February 4, 1887, and the acts of Congress amendatory thereto.

8. That the just and reasonable freight rates which should have been charged on all of said shipments hereinbefore set forth from said points of origin in California to said point of destination in Arizona after the first day of July, 1922, and up to and including the 10th day of February, 1925 was 73¢ per hundred pounds from Spreckels, Crockett and San Francisco, California, and 71¢ per hundred pounds from Oxnard and Betteravia, California.

9. That the plaintiff did duly comply with all of the requirements of the Interstate Commerce Commission as to the proof necessary for the amount of said reparations.

10. Heretofore, and on the 11th day of March, 1929, the Interstate Commerce Commission duly

made and rendered its supplemental order in said Docket No. 16,742, and cases consolidated [296] therewith, ordering and directing the defendants to pay unto the plaintiff the following sums, to wit:

Southern Pacific Company	$2104.50
Southern Pacific Company and Santa Maria Valley Railroad Company	359.75
The Atchison, Topeka and Santa Fe Railroad Company	2203.55
The Atchison, Topeka and Santa Fe Railroad Company and Bay Transport Company	1251.02
The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company ..	297.04

together with interest at the rate of 6 per cent per annum from the respective dates of the payment of the charges as shown on said list of shipments above set forth. Said last-mentioned order required the payment of said sums on or before April 26, 1929, and stated that the same were as reparation on account of unreasonable rates charged for the transportation of certain carload shipments of sugar from points in California to points in Arizona. Defendants have failed and refused to comply with said order, or to pay said sums, or any part thereof, to the plaintiff, although demand and request therefor have heretofore been duly made by the plaintiff upon said defendants.

11. That by reason of said unreasonable rates and charges and payment thereof by the plaintiff

and by reason of the refusal of the defendants to pay said reparations so awarded by the Interstate Commerce Commission, plaintiff is damaged by the defendants, Atchison, Topeka and Santa Fe Railroad, Bay Transport Company, and Southern Pacific Company in the total amount of $3,751.61, together with interest thereon at the rate of 6 per cent per annum from the respective dates of payment and plaintiff is damaged by the defendants, Southern Pacific Company and Santa Maria Valley Railroad Company in the total sum of $3,464.33, together with interest thereon [297] at the rate of 6 per cent per annum from the respective dates of payment.

12. That the plaintiff was required to employ attorneys at law to prosecute the present actions in order to effect collection of said reparations and that 20 per cent of the total amount due including interest and principal in both of said causes is reasonable as attorneys' fees:

CONCLUSIONS OF LAW.

Based upon the foregoing findings of fact, the Court finds as conclusions of law, as follows:

I.

That the order of the Interstate Commerce Commission, dated March 11, 1929, and made and entered in that certain proceeding before said Commission entitled Traffic Bureau of Phoenix Chamber of Commerce et al. vs. A. T. & S. F. Railroad Company et al., Docket No. 16,742, which order

required said defendants to pay to the plaintiff herein certain sums of money, as set forth in said order and in plaintiff's complaint, was and is a legal, valid and binding order and was made and entered by said Interstate Commerce Commission in said cause and was within the power and jurisdiction conferred upon said Interstate Commerce Commission by law, and that in the making of said order the said Interstate Commerce Commission acted within its jurisdiction and power;

II.

(A) That the rates of 86½ cents and 84 cents per hundred pounds charged the plaintiff by the defendants between the 6th day of February, 1923, and the 10th day of February, 1925, on shipments of fifty carloads of sugar originating at San Francisco, Crockett, and Spreckels in the State of California, as shown on the list of shipments hereinbefore set forth, were, as found by the Interstate Commerce Commission in said [298] proceeding unreasonable to the extent that they exceeded a rate and charge of 73 cents per hundred pounds after July 1, 1922, up to and including the 10th day of February, 1925, and that the reasonable rate which should have been charged the plaintiff on account of said shipments over defendants' lines was 73 cents per hundred pounds between said dates;

(B) That the rates of 86½ and 84 cents per hundred pounds charged plaintiff by the defendant

between the 21st day of February, 1923, and the 5th day of February, 1925, on shipments of thirty-two carloads of sugar originating at San Francisco, California, Crockett, California, Oxnard, California, and Betteravia, California, as shown on the list of shipments hereinbefore set forth, were as found by the Interstate Commerce Commission in said proceeding known as docket #16,742, unreasonable to the extent that they exceeded a rate and charge of 73 cents per hundred pounds on all of said shipments from Crockett, California, and San Francisco, California, to Phoenix, Arizona, after the date of July 1, 1922, and up to and including the 5th day of February, 1925; and 71 cents per hundred pounds on all of said shipments from Oxnard, California and Betteravia, California, to Phoenix, Arizona, after the first day of July, 1922, and up to and including the 5th day of February, 1925;

And that the reasonable rate which should have been charged the plaintiff on account of said shipments over defendants lines during said dates was 73 cents per hundred pounds on all said shipments from Crockett, California, and San Francisco, California, to Phoenix, Arizona, and 71 cents per hundred pounds on all shipments between said dates from Oxnard, California and Betteravia, California;

III.

(A) That in cause No. L.–695 by reason of said [299] unreasonable charges the plaintiff has been damaged and the defendants, and each of them, be-

came and are jointly and severally indebted to the plaintiff in the sum of $3,751.61, principal, together with interest at the rate of six per cent per annum from the respective dates of payment of the charges as shown on the list of shipments hereinbefore set forth, amounting to the sum of $1,444.14, and attorneys' fees of 20 per cent of the total amount of said indebtedness, including principal and interest, amounting to the sum of $1,039.19, together with the other lawful costs incurred by plaintiff in said action, and that plaintiff is entitled to judgment therefor.

(B) That in cause No. L.–696 by reason of said unreasonable charges, the plaintiff has been damaged and the defendants and each of them, became and are jointly and severally indebted to the plaintiff in the sum of $2,464.33, together with interest at the rate of 6 per cent per annum from the respective dates of payment of the charges as shown on the list of shipments hereinbefore set forth, amounting to the sum of $933.91, and attorneys' fees of 20 per cent of the total amount of said indebtedness, including principal and interest, amounting to the sum of $675.60, together with the other costs incurred by plaintiff in said action and the plaintiff is entitled to judgment therefor.

Dated this 15th day of July, 1930.

F. C. JACOBS,

Judge of the District Court. [300]

Thereupon the defendants did by their counsel in open court duly except to the findings of fact

and conclusions of law of the court in the following particulars, to wit:

Defendants excepted to paragraph 4 of the Court's findings of fact for the reasons that in said paragraph and finding the Court did not set out in full the report and order of the Interstate Commerce Commission referred to, as requested by defendants in paragraph 6 of their requested findings; and for findings that said report and order fixed the maximum rate of 96½¢ per hundred pounds on sugar in carloads; and for not finding that the said Commission in said order found said rate of 96½¢ not unreasonable for the future as requested by defendants in pagagraph 6 of their requested findings.

Defendants excepted to paragraph 5 of the Court's findings of fact for the reason that in said paragraph and finding the Court did not set out in full the report and order of the Interstate Commerce Commission referred to as requested by defendants in paragraph 7 of their requested findings.

Defendants excepted to paragraph 6 of the Court's findings of fact for the reason that in said paragraph and finding of the Court did not set out in full the report and order of the Interstate Commerce Commission referred to as requested by defendants in paragraph 8 of their requested findings.

Defendants excepted to paragraph 7 of the Court's findings of fact upon the ground that the

same is not supported by the evidence and is contrary to the evidence and to the law.

Defendants excepted to paragraph 8 of the Court's findings of fact upon the ground that the same is not [301] supported by the evidence, and is contrary to the evidence and to the law.

Defendants excepted to paragraph 9 of the Court's findings of fact upon the ground that the same is not supported by the evidence, and is contrary to the evidence and to the law.

Defendants excepted to paragraph 11 of the Court's findings of fact upon the ground that the same is not supported by the evidence, and is contrary to the evidence and to the law.

Defendants excepted to paragraph 12 of the Court's findings of fact upon the ground that the same is not supported by the evidence, and is contrary to the evidence and to the law.

Defendants excepted to the conclusion of law contained and set forth in paragraph I of the Court's conclusions of law upon the ground that such conclusion is not sustained by the evidence, and is contrary to the law.

Defendants excepted to the conclusion of law contained and set forth in subdivision A of paragraph II of the Court's conclusions of law upon the ground that such conclusion is not sustained by the evidence, and is contrary to the law.

Defendants excepted to the conclusion of law contained and set forth in subdivision B of paragraph II of the Court's conclusions of law upon

the ground that such conclusion is not sustained by the evidence, and is contrary to the law.

Defendants excepted to the conclusion of law contained and set forth in subdivision A of paragraph III of the Court's conclusions of law, upon the ground that such conclusion is not sustained by the evidence, and is contrary to the [302] law.

Defendants excepted to the conclusion of law contained and set forth in subdivision B of paragraph III of the Court's conclusions of law, upon the ground that such conclusion is not sustained by the evidence, and is contrary to the law.

Thereafter, to wit, on the 15th day of July, 1930, the Court's written findings of fact and conclusions of law as aforesaid were filed in said causes, and thereupon and on said July 15, 1930, the Court, upon motion of the attorney for the plaintiff, rendered and entered judgment in said cause No. L.-695—Phoenix in favor of the plaintiff and against the defendants The Atchison, Topeka & Santa Fe Railway Company, Bay Transport Company, and Southern Pacific Company for the principal sum of $3,751.61, together with interest thereon in the amount of $1,444.44, together with plaintiff's costs taxed at $1,064.94, of which 1,039.19 was adjudged by the Court to be reasonable attorneys' fees to be allowed the plaintiff for services rendered by its attorneys in the said cause up to the date of the judgment; all of said amounts to bear interest at the rate of 6% per cent per annum until paid, to which said judgment of the Court and every part and portion thereof the said defendants by their

counsel then and there duly excepted; and upon said last-mentioned date the Court rendered and entered judgment in cause No. L.–696—Phoenix in favor of the plaintiff and against the defendants Southern Pacific Company and Santa Maria Valley Railroad Company for the principal sum of $2,464.33, together with interest thereon in the amount of $933.91, together with plaintiff's costs taxed at $685.60, of which $675.60 was adjudged by the Court to be reasonable attorney's fees to be allowed the plaintiff for services rendered by its attorneys in the said cause up to the date of the judgment; all of said amounts to bear interest at the rate of [303] 6% per annum until paid; to which said judgment of the Court and every part and portion thereof the said defendants by their counsel then and there duly excepted.

That thereafter and on or about the 15th day of July, 1930, the plaintiff by its counsel filed a statement of costs, together with a notice of the time and place of application to tax costs in each of the above causes, and in said statement in cause No. L.–695—Phoenix said plaintiff claimed as attorneys' fees the sum of $1,039.19, and in cause No. L.—696 the sum of $675.60; and the defendants by their counsel filed written objections and exceptions to said items of attorneys' fees in both of said causes. Thereafter, to wit, on the 17th day of July, 1930, the Clerk of said District Court and the Judge thereof, over the objection of the defendants, did allow said items of attorneys' fees as proper items

of costs, to which said ruling and order the defendants then and there duly excepted.

And the defendants pray that this, their bill of exceptions, may be allowed, settled and signed.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
A. B. MASON,
J. E. LYONS,
GERALD E. DUFFY,
Attorneys for Defendants. [304]

Service upon plaintiff of the foregoing proposed bill of exceptions on this 20th day of September, 1930, is hereby admitted and allowed, and the said plaintiff does hereby waive all time allowed it by rule or statute for objections or suggested amendments to said bill of exceptions, and does hereby agree and stipulate that said bill of exceptions is correct and the same may be settled and allowed upon presentation to the Judge of the above-entitled District Court.

ELLIOTT & SNELL,
Attorneys for Plaintiff.

This is to certify that the foregoing bill of exceptions tendered by the defendants is correct in every particular and contains all evidence and testimony introduced at any and all hearings and trials of the said causes, and the said bill of exceptions is hereby settled and allowed, and made a part of the record of this cause.

Done in open court this 24th day of September, 1930.

F. C. JACOBS,
Judge of the United States District Court in and for the District of Arizona.

Filed Sep. 29, 1930. [305]

[Title of Court and Cause—No. L.-695—Phoenix.]

PETITION FOR APPEAL.

Comes now The Atchison, Topeka & Santa Fe Railway Company, a corporation, Bay Transport Company, a corporation, and Southern Pacific Company, a corporation, being the defendants above named, and say that on or about the 15th day of July, 1930, judgment in this cause was rendered by this Court in favor of the plaintiff, Arizona Grocery Company, a corporation, and against the said defendants, The Atchison, Topeka & Santa Fe Railway Company, Bay Transport Company, and Southern Pacific Company, by which said defendants were aggrieved. That in said judgment and the proceedings had prior and subsequent thereto in this cause certain errors were committed to the prejudice of the said defendants, all of which will appear in detail from the assignments of error filed with this petition.

WHEREFORE, said defendants, The Atchison, Topeka, & Santa Fe Railway Company, a corporation, Bay Transport Company, a corporation, and

Southern Pacific Company, a [306] corporation, hereby pray that an appeal may be allowed to them to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors complained of, and that a citation on appeal be issued as provided by law; and that a duly authenticated transcript of the record, proceedings, and all papers and documents herein may be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the law and the rules of such court in such cases made and provided; and defendant further prays that this court fix the amount of the cost and/or supersedeas bond to be given by the defendants in this cause; and that such other and further proceedings may be had as may be proper in the premises.

Dated at Phoenix, Arizona, this 23d day of September, 1930.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
A. B. MASON,
J. E. LYONS,
GERALD E. DUFFY,
Attorneys for Defendants and Appellants.

Filed Sep. 23, 1930. [307]

[Title of Court and Cause—No. L.-696—Phoenix.]

PETITION FOR APPEAL.

Comes now Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Com-

pany, a corporation, being the defendants above named, and say that on or about the 15th day of July, 1930, judgment in this case was rendered by this court in favor of the plaintiff, Arizona Grocery Company, a corporation, and against the said defendants, Southern Pacific Company and Santa Maria Valley Railroad Company, by which said defendants were aggrieved. That in said judgment and the proceedings had prior and subsequent thereto in this cause certain errors were committed to the prejudice of the said defendants, all of which will appear in detail from the assignments of error filed with this petition.

WHEREFORE, said defendants, Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, hereby pray that an appeal may be allowed to them to the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors complained of, [308] and that a citation on appeal be issued as provided by law; and that a duly authenticated transcript of the record, proceedings, and all papers and documents herein may be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the law and the rules of such court in such cases made and provided; and defendant further prays that this Court fix the amount of the cost and/or supersedeas bond to be given by the defendants in this cause; and that such other and further proceedings may be had as may be proper in the premises.

Dated at Phoenix, Arizona, this 23d day of September, 1930.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
A. B. MASON,
J. E. LYONS,
GERALD E. DUFFY,
Attorneys for Defendants and Appellants.

Filed Sep. 23, 1930. [309]

[Title of Court and Cause—Nos. L.-695, L.-696—Phoenix.]

ASSIGNMENTS OF ERROR.

Come now the defendants in the above-entitled causes, The Atchison, Topeka & Santa Fe Railway Company, a corporation, Bay Transport Company, a corporation, Santa Maria Valley Railroad Company, a corporation, and Southern Pacific Company, a corporation, and in connection with their petitions for appeal therein, make the following assignments of error which they aver occurred upon the trial of said causes or were committed by the court in the findings of fact, or in the conclusions of law, or in the rendition of judgments, or in prior proceedings in said causes:

I.

The court erred in finding the following facts, to wit:

"Said report and order (referring to the

report and order of the Interstate Commerce Commission in Docket No. 11,532, Traffic Bureau etc. v. Director General, et al., 62 I. C. C. 412) fixed a maximum rate [310] of 96½ cents per 100 pounds on sugar in carloads from points in said states referred to in said list of shipments hereinbefore set forth, to Phoenix, Arizona. Thereafter, the defendants in said proceedings before said Commission, including the defendants in these causes and their connecting carriers, duly and regularly published their tariffs effectively September 17, 1921, and naming a rate of 96 cents per 100 pounds of sugar in carloads from points in California to Phoenix, Arizona, which said rate was one-half cent less than the rate of 96½ cents per 100 pounds found as a maximum rate for the future by said Commission in said Docket No. 11532,"

said findings of fact being contained in paragraph 4 of special findings of fact found by the Court, for the reason that there is no competent evidence to sustain such findings, and the same are not supported by, and are contrary to, the evidence and the law; the particular error of the Court herein asserted being its use of the language underlined in the foregoing quotation.

II.

The court erred in refusing to find the following facts, which were requested by the defendants, to wit:

"Said report and order (referring to the report and order of the Interstate Commerce Commission in Docket No. 11532, Traffic Bureau, etc., v. Director General, et al., 62 I. C. C. 412) were and are as follows": (Here follows in the findings of fact requested by the defendants a true and correct copy of the opinion and order of said Commission in said proceeding, Docket No. 11532; a copy of said opinion and order are likewise set out in full, as Exhibit No. 1 annexed to the agreed statement of facts herein. "To save repetition reference is hereby made to defendants' requested findings of fact and to said agreed statement of facts.) "Thereafter, the defendants in said proceeding before said Commission, including the defendants in these causes and their connecting carriers, duly and regularly filed and published their tariffs effective September 17, 1921, complying with the Commission's order in said Docket No. 11532, and naming a rate of 96 cents per 100 pounds on sugar in carloads from points in California to Phoenix, Arizona, which said rate was one-half cent less than the rate of 96½ cents per 100 pounds found not unrea-

sonable for the future by said Commission in said Docket No. 11532,"

said requested findings being contained in paragraph 6 of special findings of fact and conclusions of law requested by the defendants; the court's findings quoted above, to which assignment of error No. 1 is directed, having been substituted by the court in lieu of [311] the language herein last above quoted; for the reason that such proposed findings of fact, requested by the defendants, were conclusively proven by the evidence, and such proposed findings were and are material to the issues.

III.

The court erred in refusing to find the following fact, and in refusing to incorporate said finding of fact in paragraph 5 of the findings of fact found by the court, as requested by the defendants, to wit:

"Said report and order of said Commission in said proceeding, Docket No. 14449, were and are as follows": (Here follows, in the special findings of fact and conclusions of law requested by defendants, a full, true and correct copy of the opinion and order of the Interstate Commerce Commission in Docket No. 14449, Traffic Bureau, etc., v. A. T. & S. F. Ry. Co., et al., 95 I. C. C. 244; a full, true and correct copy of said opinion and order is likewise attached as Exhibit No. 2 to the agreed statement of facts on file herein; and to save repetition reference is hereby made to defendants'

requested findings of fact and to said agreed statement of facts.)

such requested finding being contained in paragraph 7 of special findings of fact and conclusions of law requested by defendants; said paragraph 7 of defendants' requested findings of fact having been adopted *verbatim* by the court as paragraph 5 of its special findings of fact, with the exception of the finding above quoted; for the reasons that such fact was conclusively proven by the evidence, and was admitted and uncontradicted, and the finding is material to the issue of the cases.

IV.

The court erred in refusing to find the following facts, and in refusing to incorporate said finding of fact in paragraph 6 of findings of fact found by the court, as requested by the defendants, to wit:

"Said report and order of said Commission in said Docket No. 16742, were and are as follows": (Here follows, in the special findings of fact and conclusions of law requested by defendants, a full, true and correct copy of the report and order of the Interstate Commerce [312] Commission in Docket No. 16742, Traffic Bureau, etc., v. A. T. & S. F. Ry. Co., et al., 140 I. C. C. 171; a full true and correct copy of said opinion and order are likewise attached as Exhibit No. 3 to the agreed statement of facts on file herein; and to save repetition reference is hereby made to defendants' re-

quested findings of fact and to said agreed statement of facts.)

said requested finding being contained in paragraph 8 of special findings of fact and conclusions of law requested by defendants; said paragraph 8 of defendants' requested findings of fact having been adopted *verbatim* by the court as paragraph 6 of its special findings of fact, with the exception of the finding above quoted; for the reasons that such fact was conclusively proven by the evidence, and was admitted and uncontradicted, and the finding is material to the issue of the cases.

V.

The court erred in finding the following fact, which was requested by the plaintiff, to wit:

> "That said freight charges assessed plaintiff on the list of shipments hereinbefore set forth, same being the shipments involved in these causes, were and are unreasonable to the plaintiff and in violation of the Interstate Commerce Act of February 4, 1887, and the acts Congress amendatory thereto,"

which is contained in paragraph 4 of findings of fact requested by plaintiff in Cause No. L.–695, in paragraph 4 of findings of fact requested by plaintiff in Cause No. L.–696, and in paragraph 7 of findings of fact found by the court, for the reasons that there is no competent evidence to sustain such a finding, and the same is not supported by and is contrary to the evidence; no competent testimony whatever having been offered at the trial as to the

unreasonableness, or illegality in any other respect, of the freight charges assessed upon plaintiff's said shipments involved in said causes; it being affirmatively shown, by the admitted and uncontradicted evidence set forth in the agreed statement of facts, that the freight charges assessed upon plaintiff's said shipments were based upon rates which were just, [313] reasonable, and lawful, having in fact been less in amount than a rate which had previously been declared, by valid formal findings and formal order of the Interstate Commerce Commission (Traffic Bureau, etc., v. Director-General, et al., 62 I. C. C. 412), to be reasonable, just and lawful for application upon shipments of sugar of the character of the plaintiff's shipments, from points in California to Phoenix, Arizona, from and after the 17th day of September, 1921, and until the further order of said Commission, which said findings and order of said Commission had not, prior to said 10th day of February, 1925, been modified, revoked, or annulled, and were at all of said times, from and after said 17th day of September, 1921, and until and including said 10th day of February, 1925, valid and lawful, and in full and continuous force and effect.

VI.

The court erred in finding the following fact, which was requested by the plaintiff, to wit:

"That the just and reasonable freight rates which should have been charged on all of said shipments hereinbefore set forth from said

points of origin in California to said point of destination in Arizona after the first day of July, 1922, and up to and including the 10th day of February, 1925, was 73 cents per hundred pounds from Spreckels, Crockett and San Francisco, California, and 71 cents per hundred pounds from Oxnard and Betteravia, California,"

which is contained in paragraph 4 of findings of fact requested by plaintiff in Cause No. L.–695, and in paragraph 4 of findings of fact requested by plaintiff in Cause No. L.–696, and in paragraph 8 of findings of fact found by the court, for the reasons that said finding is not sustained or supported by any competent evidence, and is contrary to the evidence, in that it affirmatively appears from the stipulated and agreed statement of facts that the freight rates which were actually charged upon all of said shipments of the plaintiff involved in said causes were just, reasonable, and lawful, having in fact been less in amount than a rate which had previously been declared, by valid formal findings and formal order of the [314] Interstate Commerce Commission (Traffic Bureau, etc., v. Director-General, et al., 62 I. C. C. 412), to be reasonable, just and lawful for application upon shipments of sugar of the character of the plaintiff's shipments, from points in California to Phoenix, Arizona, from and after the 17th day of September, 1921, and until the further order of said Commission, which said findings and order of said Commission had

not, prior to said 10th day of February, 1925, been modified, revoked, or annulled, and were at all of said times, from and after said 17th day of September, 1921, and until and including said 10th day of February, 1925, valid and lawful, and in full and continuous force and effect.

VII.

The court erred in finding the following fact, which was requested by the plaintiff, to wit:

> "That the plaintiff did duly comply with all of the requirements of the Interstate Commerce Commission as to the proof necessary for the amount of said reparations,"

which is contained in paragraph 6 of findings of fact requested by plaintiff in Cause No. L.–695, and in paragraph 6 of findings of fact requested by plaintiff in Cause No. L.–696, and in paragraph 9 of findings of fact found by the court, for the reasons that the same is not sustained nor supported by competent evidence, and is contrary to the evidence and the law, there being no competent evidence whatsoever upon which to base said finding.

VIII.

The court erred in finding the following facts, which were requested by the plaintiff, to wit:

> "That by reason of said unreasonable rates and charges and payment thereof by the plaintiff and by reason of the refusal of the defendants to pay said reparations so awarded by the Interstate Commerce Commission, plaintiff is

damaged by the defendants, Atchison, Topeka and Santa Fe Railroad, Bay Transport Company, and Southern Pacific Company in the total amount of $3,751.61, together with interest thereon at the rate of 6 per cent per annum from the respective dates of payment, and plaintiff is damaged by the [315] defendants, Southern Pacific Company and Santa Maria Valley Railroad Company in the total sum of $3,484.33, together with interest thereon at the rate of 6 per cent per annum from the respective dates of payment,".

which are contained in paragraph 9 of findings of fact requested by the plaintiff in Cause No. L.–695, and paragraph 9 of findings of fact requested by the plaintiff in Cause No. L.–696, and in paragraph 11 of findings of fact found by the court, for the reasons that such findings are not supported nor sustained by the evidence, and are contrary to the evidence and the law, in that there is no competent evidence to show that any unreasonable rates and/or charges were ever collected by the defendants, or any of them, from the plaintiff, or paid by the plaintiff to the defendants or any of them, or that the defendants have ever refused to pay reparation properly and lawfully awarded by the Interstate Commerce Commission to the plaintiff, or that the plaintiff has ever been damaged by the collection of the rates and charges referred to in the complaints in said causes; the causes of action in each of said causes being based solely upon the theory that the Interstate Commerce Commission is possessed of

lawful jurisdiction to award reparation for the collection of charges based upon rates duly and lawfully published by the defendants, as carriers engaged in interstate commerce, in compliance and conformity with a lawful valid continuing formal order of said Commission prescribing the maximum reasonable future rate to be observed by said defendants; and the uncontradicted testimony shows that each and all of the rates applied upon each and all of the plaintiff's said shipments were in fact equal to, or less than, a rate so prescribed as a maximum reasonable rate for the future by a lawful valid continuing formal order of said Commission, in effect without modification at all of the times said shipments moved.

IX.

The court erred in finding the following facts, which were [316] requested by the plaintiff, to wit:

> "That the plaintiff was required to employ attorneys at law to prosecute the present actions, in order to effect collection of said reparations, and that 20 per cent of the total amount due including interest and principal in both of said causes is reasonable as attorneys' fees,"

which are contained in paragraph 10 of findings of fact requested by the plaintiff in each of said causes, and in paragraph 12 of findings of fact found by the court, for the reasons that such findings are not supported or sustained by the evidence, and are contrary to the evidence and the law, in

that said amount found by the court to be reasonable as attorneys' fees is so clearly and palpably too large, in view of the services rendered, as to amount to an abuse of the court's discretion.

X.

The court erred in failing to adopt the agreed statement of facts on file herein, without amendment, modification, or addition, as its findings of fact in said causes, and in making findings of fact herein which do not reproduce the statements of fact set forth in said agreed statement of facts, for the reason that no evidence whatever was introduced which in any way conflicts with, or modifies, said agreed statement of facts, or any part thereof, and the court's said failure to adopt said agreed statement of facts as its findings herein, and the making of findings of fact by the court not conforming to and reproducing said agreed statement of facts, are therefore contrary to the evidence and the law, and not supported by any competent evidence whatsoever.

XI.

The court erred in finding the following conclusions of law, which was requested by the plaintiff, to wit:

"That the order of the Interstate Commerce Commission, dated March 11, 1929, and made and entered in that certain proceeding before said Commission entitled Traffic Bureau of Phoenix Chamber of Commerce et al., vs. A. T. & S. F. Railroad Company, et al., Docket

No. [317] 16742, which order required said defendants to pay to the plaintiff herein certain sums of money, as set forth in said order and in plaintiff's complaint, was and is a legal, valid and binding order and was made and entered by said Interstate Commerce Commission in said cause, and was within the power and jurisdiction conferred upon said Interstate Commerce Commission by law, and that in the making of said order the said Interstate Commerce Commission acted within its jurisdiction and power,"

which is contained in paragraph 1 of conclusions of law requested by plaintiff in each of said causes, and in paragraph 1 of conclusions of law found by the court, for the reasons that such conclusion is not sustained or supported by competent evidence, and is contrary to the evidence and the law, in that the evidence shows without conflict that said order of the Interstate Commerce Commission, dated March 11, 1929, purports to require the defendants to pay reparation for the collection of charges based upon rates duly and lawfully published and assessed in conformity with a legal, valid continuing formal order of said Interstate Commerce Commission, wherein and whereby said Commission prescribed the rate to be observed for the future by said defendants as a maximum reasonable rate.

XII.

The court erred in finding the following conclu-

sion of law, which was requested by the plaintiff, to wit:

> "That the rates of 86½ cents and 84 cents per hundred pounds charged the plaintiff by the defendants between the 6th day of February, 1923, and the 10th day of February, 1925, on shipments of fifty car loads of sugar originating at San Francisco, Crockett, and Spreckels in the State of California, as shown on the list of shipments hereinbefore set forth, were, as found by the Interstate Commerce Commission in said proceeding unreasonable to the extent that they exceeded a rate and charge of 73 cents per hundred pounds after July 1, 1922, up to and including the 10th day of February, 1925, and that the reasonable rate which should have been charged the plaintiff on account of said shipments over defendants' lines was 73 cents per hundred pounds between said dates,"

which is contained in paragraph 2 of conclusions of law requested by the plaintiff in cause No. L.-695, and in paragraph 2 (A) of [318] conclusions of law found by the court, for the reasons that such conclusions are not sustained or supported by the evidence, and are contrary to the evidence and the law, upon the grounds hereinbefore assigned, particularly in connection with assignments of error Nos. V, VI, and XI.

XIII.

The court erred in finding the following conclu-

sions of law, which were requested by the plaintiff, to wit:

"That the rates of 86½ and 84 cents per hundred pounds charged the plaintiff by the defendants between the 21st day of February, 1923, and the 5th day of February, 1925, on shipments of thirty-two carloads of sugar originating at San Francisco, California, Crockett, California, Oxnard, California, and Betteravia, California, as shown on the list of shipments hereinbefore set forth, were as found by the Interstate Commerce Commission in said proceeding known as Docket #16742, unreasonable to the extent that they exceeded a rate and charge of 73 cents per hundred pounds on all of said shipments from Crockett, California, and San Francisco, California, to Phoenix, Arizona, after the date of July 1, 1922, and up to and including the 5th day of February, 1925; and 71 cents per hundred pounds on 11 of said shipments from Oxnard, California, and Betteravia, California, to Phoenix, Arizona, after the first day of July, 1922, and up to and including the 5th day of February, 1925;

"And that the reasonable rate which should have been charged the plaintiff on account of said shipments over defendants' lines during said dates was 73 cents per hundred pounds on all said shipments from Crockett, California, and San Francisco, California, to Phoenix, Arizona, and 71 cents per hundred pounds on

all shipments between said dates from Oxnard, California, and Betteravia, California,"

which is contained in paragraph 2 of conclusions of law requested by the plaintiff in cause No. L.-696, and in paragraph 2 (B) of conclusions of law found by the court, for the reasons that such conclusions are not sustained or supported by the evidence, and are contrary to the evidence and the law, upon the grounds hereinbefore assigned, particularly in connection with assignments of error Nos. V, VI, and XI.

XIV.

The court erred in finding the following conclusion of law, [319] which was requested by the plaintiff, to wit:

"That is cause No. L.-695 by reason of said unreasonable charges the plaintiff has been damaged and the defendants, and each of them, became and are jointly and severally indebted to the plaintiff in the sum of $3,751.61, principal, together with interest at the rate of six per cent per annum from the respective dates of payment of the charges as shown on the list of shipments hereinbefore set forth, amounting to the sum of $1,444.14, and attorneys' fees of 20 per cent of the total amount of said indebtedness, including principal and interest, amounting to the sum of $1,039.19, together with the other lawful costs incurred by plaintiff in said action, and that plaintiff is entitled to judgment therefor,"

which is contained in paragraph 3 of conclusions of law requested by the plaintiff in cause No. L.–695, and in paragraph 3 (A) of conclusions of law found by the court, for the reasons that such conclusions are not sustained or supported by the evidence, and are contrary to the evidence and the law, upon the grounds hereinbefore assigned, particularly in connection with assignments of error Nos. VIII and IX.

XV.

The court erred in finding the following conclusions of law, which were requested by the plaintiff, to wit:

> "That in cause No. L.–696 by reason of said unreasonable charges, the plaintiff has been damaged and the defendants and each of them, became and are jointly and severally indebted to the plaintiff in the sum of $2,464.33, together with interest at the rate of 6 per cent per annum from the respective dates of payment of the charges as shown on the list of shipments hereinbefore set forth, amounting to the sum of $933.91, and attorneys' fees of 20 per cent of the total amount of said indebtedness, including principal and interest, amounting to the sum of $675.60, together with the other costs incurred by plaintiff in said action and the plaintiff is entitled to judgment therefor,"

which is contained in paragraph 3 of conclusions of law requested by the plaintiff in cause No. L.–696, and in paragraph 3 (B) of conclusions of law

found by the court, for the reasons that such conclusions are not sustained or supported by the evidence, and are contrary to the evidence and the law, upon the grounds hereinbefore assigned, particularly in connection with assignments of [320] error Nos. VIII and IX.

XVI.

The court erred in rendering judgments upon the facts found in favor of the plaintiff and against the defendants, The Atchison, Topeka & Santa Fe Railway Company, Bay Transport Company, Santa Maria Valley Railroad Company, and Southern Pacific Company, and in refusing to render judgments for said defendants, in said causes, for the following reasons:

(1) The facts as found by the court are not sufficient to support the judgments in favor of the plaintiff, in that the judgments are based solely upon the theory that the Interstate Commerce Commission, on March 11, 1929, issued a lawful, valid and binding order directing said defendants to pay to the plaintiff certain sums, as reparation for the collection of alleged unreasonable charges upon carload shipments of sugar from points in California to Phoenix, Arizona, moving during the period between July 1, 1922, and February 10, 1925, both inclusive; whereas the uncontradicted testimony shows that the rates assessed and the charges collected by said defendants, and each of them, for the transportation of plaintiff's said shipments moving during said period were duly and regularly published and filed with the Interstate Commerce Commission, in conformity with lawful findings and

a lawful continuing order of said Commission theretofore duly made and entered, and which said findings and order were continuously in effect, and not revoked, modified or annulled, during all of said period, and up to and including said 10th day of February, 1925, and that the rates assessed and the charges collected upon each and all of the said shipments of the plaintiff were the lawful tariff rates and charges assessed and collected by virtue of, and under authority of, said continuing formal valid findings and order of said Commission; and said order of said Commission purporting to award reparation is therefore void and of no effect, because in excess of the jurisdiction conferred [321] by law and by the Interstate Commerce Act upon said Commission.

(2) If said Interstate Commerce Act is to be construed as authorizing said Commission to award reparation for the collection of rates and charges published, assessed and collected in accordance with, and conforming to, a valid continuing effective order previously issued by said Commission prescribing the maximum reasonable rate to be charged from and after the effective date thereof, said Interstate Commerce Act is to that extent invalid and unconstitutional, and any and all orders purporting to be issued in pursuance of said purported jurisdiction thereby conferred are likewise invalid and unconstitutional, because in contravention of the Fifth Amendment to the Constitution of the United States, and particularly those portions thereof which forbid the taking of property without due process of law.

XVII.

The court erred in rendering judgments upon the facts set forth in the agreed statement of facts and in the uncontradicted oral and documentary testimony supplementary to said agreed statement in favor of the plaintiff and against the defendants, The Atchison, Topeka & Santa Fe Railway Company, Bay Transport Company, Southern Pacific Company, and Santa Maria Valley Railroad Company; and in refusing to render judgments in favor of such defendants in said causes, for the reasons hereinbefore set forth, particularly in connection with assignment of error No. XVI.

XVIII.

The court erred in refusing to find the following conclusion of law, requested by defendants in paragraph 1 of their requested conclusions of law, to wit:

"That the rates and charges assessed and collected upon plaintiff's said shipments, as shown upon said list above set forth, were published and collected by authority of a formal and continuing order of the Interstate Commerce Commission, and had previously been established and declared by said Commission to be not unreasonable, after formal investigation and/or were [322] less in amount than rates which had been specifically prescribed and declared by said Commission to be not unreasonable after such formal investi-

for the reasons that such conclusion is established by the uncontradicted testimony, and conforms to and is justified and required by all of the evidence and the law, and is material to the issues in these cases.

XIX.

The court erred in refusing to find the following conclusions of law requested by the defendants in paragraph 2 of their requested conclusions of law, to wit:

"That said order of said Interstate Commerce Commission dated the 11th day of March, 1929, purporting to order and direct these defendants to pay reparation to the plaintiff with respect to its said shipments hereinbefore listed, is null and void and of no effect, because said Commission was and is without lawful jurisdiction and authority under the Interstate Commerce Act to make said order, for the following reasons:

(a) Said Interstate Commerce Act does not vest said Commission with jurisdiction and authority to award reparation with respect to charges collected upon the basis of rates which said Commission has theretofore specifically prescribed or approved as reasonable and just for the future by a formal continuing order, or with respect to charges collected upon the basis of rates which are less in amount than rates so prescribed and/or approved as just and reasonable.

(b) If said Act were so construed as to confer such jurisdiction and authority upon said Commission, it would to that extent be unconstitutional, and any and all orders made in pursuance of said purported jurisdiction would likewise be unconstitutional and void, because contrary to and forbidden by the Fifth Amendment to the United States Constitution, and particularly those portions of said Amendment which guarantee that no person shall be deprived of property without due process of law,"

for the reasons that said conclusions are, and each of them is, justified and required by the evidence, and in conformity with the controlling principles of law applicable in these cases, and is material to the issues in said cases.

XX.

The court erred in refusing to find the following conclusion of law requested by the defendants in paragraph 3 of their requested [323] conclusions of law to wit:

"That plaintiff has failed to establish by the evidence any cause of action whatever against the defendants, or any of them, and has failed to establish that any unreasonable or unlawful rate or charge was collected upon any of its said shipments, or that any reparation whatsoever is due or payable with respect to said shipments, or any of them,"

for the reasons hereinbefore assigned.

XXI.

The court erred in refusing to find the following conclusion of law requested by defendants in paragraph 4 of their requested conclusions of law, to wit:

> "That the plaintiff is not entitled to recover any amount whatsoever as and for fees of its attorneys and counsel in these causes,"

for the reason that there is no authority in law for the recovery of any judgment in any amount whatsoever against any of the defendants, and consequently there is no authority for the recovery of any fees of attorneys and counsel.

XXII.

The court erred in refusing to find the following conclusion of law which was requested by defendants in paragraph 5 of their requested conclusions of law, to wit:

> "That the defendants are entitled to judgment against the plaintiff, that the plaintiff take nothing by its causes of action, or either of them, and that the complaints herein be dismissed,"

for the reasons hereinbefore assigned, particularly in connection with assignments of error Nos. XVI and XVII.

WHEREFORE, the said defendants pray that the judgment of the District Court in both of the above causes may be reversed.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants.
GERALD E. DUFFY,
JAMES E. LYONS,
A. BURTON MASON,
Of Counsel for Defendants.

Filed Sep. 23, 1930. [324]

[Title of Court and Cause—No. L.-695—Phoenix.]

ORDER ALLOWING APPEAL AND FIXING AMOUNT OF COST AND/OR SUPERSEDEAS BOND.

On the 24th day of September, 1930, came the defendants by their attorneys and filed herein, and presented to the Court their petition for the allowance of an appeal, and assignments of error intended to be urged by them, praying also that a duly authenticated transcript of the records, proceedings, and all papers and documents upon which the judgment herein was rendered may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and that citation issue; and further praying that this Court fix the amount of the costs and/or supersedeas bond to be given by the defendants in this cause; and that such other and further proceedings may be had as may be proper in the premises,—

NOW, THEREFORE, on consideration thereof the Court does hereby allow the appeal as prayed for, and does hereby fix the amount of the costs and supersedeas bond in the sum of Seventy-five Hundred Dollars ($7500.00), and does hereby order that such bond shall operate as a supersedeas bond.

Dated this 24th day of September, 1930.

F. C. JACOBS,

Judge of the United States District Court for the District of Arizona. [325]

Endorsement on foregoing Order Allowing Appeal and Fixing Amount of Cost and/or Supersedeas Bond: Filed Sep. 29, 1930. [326]

[Title of Court and Cause—No. L.-696—Phoenix.]

ORDER ALLOWING APPEAL AND FIXING AMOUNT OF COST AND/OR SUPERSEDEAS BOND.

On this 24th day of September, 1930, came the defendants by their attorneys and filed herein, and presented to the Court their petition for the allowance of an appeal, and assignments of error intended to be urged by them, praying also that a duly authenticated transcript of the records, proceedings, and all papers and documents upon which the judgment herein was rendered may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and that citation issue; and further praying that this Court fix the amount of the costs and/or supersedeas bond to be given by the defendants in

this cause; and that such other and further proceedings may be had as may be proper in the premises.

NOW, THEREFORE, on consideration thereof the Court does hereby allow the appeal as prayed for, and does hereby fix the amount of the costs and supersedeas bond in the sum of Sixty-five Hundred Dollars ($6500.00), and does hereby order that such bond shall operate as a supersedeas bond.

Dated this 24th day of September, 1930.

F. C. JACOBS,
Judge of the United States District Court for the District of Arizona. [327]

Endorsement on foregoing Order Allowing Appeal and Fixing Amount of Cost and/or Supersedeas Bond: Filed Sep. 29, 1930. [328]

[Title of Court and Cause—No. L.-695—Phoenix.]

[Seal of Southern Pacific Company]

BOND.

KNOW ALL MEN BY THESE PRESENTS: That The Atchison Topeka & Santa Fe Railway Company, a corporation, Bay Transport Company, a corporation, and Southern Pacific Company, a corporation, as principals, and Pacific Indemnity Company of California, a corporation, as surety, are held and firmly bound unto Arizona Grocery Company, a corporation, plaintiff in the above-entitled action in the full and just sum of Seventy-five Hundred ($7500.00) Dollars, to be paid to said Ariz-

ona Grocery Company, its successors or assigns; for the payment of which sum well and truly to be made we hereby bind ourselves, our successors and assigns, jointly and severally by these presents.

Signed and sealed this 24th day of September, 1930.

The condition of this obligation is such that whereas a certain judgment and decision in the above-entitled cause was rendered in favor of said plaintiff, Arizona Grocery Company, a corporation, and against said defendants, The Atchison, Topeka & Santa Fe Railway Company, a corporation, Bay Transport Company, a corporation and Southern Pacific [329] Company, a corporation, on or about the 15th day of July, 1930, by the Honorable F. C. Jacobs, presiding Judge of the above-entitled cause and court, and whereas, the said defendants, The Atchison, Topeka & Santa Fe Railway Company, a corporation, Bay Transport Company, a corporation, and Southern Pacific Company, a corporation, after the entry and filing of said judgment duly filed and presented to the above-entitled court their petition, praying for the allowance of an appeal for the review of said judgment by the United States Circuit Court of Appeals for the Ninth Circuit, for the purpose of reversing said judgment, and said appeal was allowed by the said Honorable F. C. Jacobs, presiding Judge of the United States District Court for the District of Arizona, upon the said defendants giving bond, according to law in the sum of Seventy-five Hundred

($7500.00) Dollars, which said bond shall operate as a supersedeas bond.

NOW, THEREFORE, if the said The Atchison, Topeka & Santa Fe Railway Company, a corporation, Bay Transport Company, a corporation, and Southern Pacific Company, a corporation, defendants above named, shall prosecute their said appeal to effect and shall pay the amount of said judgment and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, otherwise it shall remain in full force and effect.

And the said surety in this obligation hereby covenants and agrees that in case of a breach of any condition of this bond the United States District Court for the District of Arizona may, upon notice to said surety of not less than ten (10) days proceed summarily in this cause to ascertain the amount which said surety is bound to pay on account of such breach and render judgment therefor against said surety and [330] to order execution therefor.

IN WITNESS WHEREOF, the undersigned have executed this bond this said 24th day of September, 1930.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a Corporation.

By W. H. BRENNER,

Its Assistant to General Manager.

[Corporate Seal]

Attest: S. A. FORRESTER,
Its Deputy Asst. Secretary.

BAY TRANSPORT COMPANY, a Corporation.

By V. CLUEGOMT,
Its President.

[Corporate Seal]

Attest: W. C. McDONALD,
Its Secretary.

SOUTHERN PACIFIC COMPANY, a Corporation.

By F. S. McGINNIS,
Its Vice-President.

[Corporate Seal] Attest: G. S. KING,
Principals.

PACIFIC INDEMNITY COMPANY.

By L. G. BLAKE,
Attorney-in-fact.

[Seal] Countersigned: MABEL FETTER,
Attorney-in-fact,
Surety.

The above bond and surey approved this 24th day of September, 1930.

F. C. JACOBS,
Judge of the United States District Court for the District of Arizona.

Filed Sep. 29, 1930. [331]

[Title of Court and Cause—No. L.-696—Phoenix.]

[Seal of Southern Pacific Company.]

BOND.

KNOW ALL MEN BY THESE PRESENTS: That Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, as principals, and Pacific Indemnity Company of California, a corporation, as surety, are held and firmly bound unto Arizona Grocery Company, a corporation, plaintiff in the above-entitled action, in the full and just sum of Sixty-five Hundred ($6500.00) Dollars, to be paid to said Arizona Grocery Company, its successors or assigns; for the payment of which sum well and truly to be made we hereby bind ourselves, our successors and assigns, jointly and severally by these presents.

Signed and sealed this 24th day of September, 1930.

The condition of this obligation is such that whereas a certain judgment and decision in the above-entitled cause was rendered in favor of said plaintiff, Arizona Grocery Company, a corporation, and against said defendants, Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, on or about the 15th day of July, 1930, by the Honorable F. C. Jacobs, presiding Judge of the above-entitled [332] cause and court, and whereas, the said defendants, Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corpora-

tion, after the entry and filing of said judgment duly filed and presented to the above-entitled court their petition, praying for the allowance of an appeal for the review of said judgment by the United States Circuit Court of Appeals for the Ninth Circuit, for the purpose of reversing said judgment, and said appeal was allowed by the said Honorable F. C. Jacobs, presiding Judge of the United States District Court for the District of Arizona, upon the said defendants giving bond, according to law, in the sum of Sixty-five Hundred ($6,500.00) Dollars, which said bond shall operate as a supersedeas bond.

NOW, THEREFORE, if the said Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, defendants above named, shall prosecute their said appeal to effect and shall pay the amount of said judgment and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, otherwise it shall remain in full force and effect.

And the said surety in this obligation hereby covenants and agrees that in case of a breach of any condition of this bond the United States District Court for the District of Arizona may, upon notice to said surety of not less than ten (10) days proceed summarily in this cause to ascertain the amount which said surety is bound to pay on account of such breach and render judgment therefor against said surety and [333] to order execution therefor.

IN WITNESS WHEREOF, the undersigned have executed this bond this said 24th day of September, 1930.

SOUTHERN PACIFIC COMPANY, a Corporation.

By F. S. McGINNIS,
Its Vice-President.

[Corporate Seal] Attest: G. S. KING,
Its Assistant Secretary.

SANTA MARIA VALLEY RAILROAD COMPANY, a Corporation.

By RAYMOND W. STEPHENS,
Its Vice-President.

[Corporate Seal] Attest: E. A. OLSON,
Its Secretary.

Principals.

PACIFIC INDEMNITY COMPANY.

By L. G. BLAKE,
Attorney-in-fact.

[Seal] Countersigned:

By MABEL FETTER,
Attorney-in-fact,
Surety.

The above bond and surety approved this 24th day of September, 1930.

F. C. JACOBS,
Judge of the United States District Court for the District of Arizona.

Filed Sep. 29, 1930. [334]

[Title of Court and Cause—Nos. L.-695—L.-696—Phoenix.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court, and to Messrs. Elliott & Snell, Attorneys for Plaintiff and Appellee:

You, and each of you, are hereby notified that defendants and appellants require that the transcript of record to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, with the appeals heretofore filed and allowed in the above causes, shall contain properly certified copies of the following papers, proceedings and documents, which defendants and appellants aver to be necessary to a determination of the cause in the appellate [335] court, to wit:

1. All summons and returns in each of the above causes.
2. The complaints in each of the above causes.
3. The demurrers in each of the above causes.
4. The answers in each of the above causes.
5. The agreed statement of facts.
6. The stipulations waiving jury and consolidating the causes for trial, filed in each of the above cases.
7. The request for special findings of fact by the court filed in each of the above causes.
8. The stipulation for procedure filed in the case on January 8, 1930.
9. All minute entries of the Clerk.

10. Plaintiff's Exhibits "A," "B," and "C."

11. Plaintiff's proposed and requested findings of fact and conclusions of law filed in each case.

12. Defendants' exceptions and objections to findings of fact and conclusions of law requested by plaintiff.

13. The findings of fact and conclusions of law requested by the defendants.

14. Stipulation for consolidation of record.

15. Order for consolidation of record.

16. The final findings of fact and conclusions of law found by the Court.

17. The judgments in each case.

18. Plaintiff's notice of application to tax costs with attached statement of costs in each case.

19. Defendants' objections and exceptions to plaintiff's statement of costs in each case.

20. The bill of exceptions.

21. Petitions for appeal filed in each case. [336]

22. Assignments of error, filed in each case.

23. Order allowing appeal and fixing amount of cost and/or supersedeas bond, filed in each case.

24. Supersedeas and appeal bond, and approval, filed in each case.

25. Citations on appeal filed in each case.

26. This praecipe.

27. Clerk's certificate.

Dated, this 29th day of September, 1929.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
J. E. LYONS,
A. B. MASON,
GERALD E. DUFFY,
Attorneys for Defendants and Appellants.

Service of the within praecipe for transcript of record and receipt of copy thereof is hereby admitted on this 29th day of September, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiff and Appellee.

Filed Sep. 29, 1930. [337]

[Title of Court.]

United States of America,
District of Arizona,—ss.

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

I, C. R. McFall, Clerk of the District Court of the United States, for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said court, including the records, papers and files in the case of Arizona Grocery Company, a Corporation, Plaintiff, vs. The Atchison, Topeka & Santa Fe Railway Company, a Corporation, Bay Transport Company, a Corporation, and Southern Pacific Company, a Corporation, Defendants, numbered L.-695—Phoenix, on the docket of said court, and in the case of Arizona

Grocery Company, a Corporation, Plaintiff, vs. Southern Pacific Company, a Corporation, and Santa Maria Valley Railroad Company, a Corporation, Defendants, on the docket of said court.

I further certify that the attached pages, numbered 1 to 344, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the praecipe filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the city of Phoenix, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of $59.60 and that said sum has been paid to me by counsel for the appellants.

I further certify that the original citations issued in the said causes are hereto attached and made a part of this record.

WITNESS my hand and the seal of the said court this 17th day of October, 1930.

[Seal]

C. R. McFALL,
Clerk.
By J. Lee Baker.
J. Lee Baker,
Chief Deputy Clerk. [338]

[Title of Court and Cause—No. L.-695—Phoenix.]

CITATION ON APPEAL.

To Arizona Grocery Company, a Corporation, Plaintiff Above Named, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an appeal, and/or order allowing appeal filed in the Clerk's office of the United States District Court for the District of Arizona, wherein The Atchison, Topeka & Santa Fe Railway Company, a corporation, Bay Transport Company, a corporation, and Southern Pacific Company, a corporation, are appellants and you are appellee, to show cause, if any there be, why the judgment rendered against the said The Atchison, Topeka & Santa Fe Railway Company, a corporation, Bay Transport Company, a corporation, and Southern Pacific Company, a corporation, appellants as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf. [339]

WITNESS the Hon. F. C. JACOBS, Judge of the United States District Court, for the District of Arizona, this 24th day of September, 1930.

[Seal] F. C. JACOBS,
Judge of the United States District Court, for the District of Arizona.

Service of the within citation on appeal, and receipt of a copy thereof is hereby admitted this 29th day of September, 1930.

Service is also admitted as of this date and receipt of copies of petition for appeal, ordered allowing appeal, and fixing amount of cost and/or supersedeas bond, assignments of error, and bond, all having to do with the above entitled and numbered cause.

ELLIOTT & SNELL,
Attorneys for Arizona Grocery Company,
Plaintiff and Appellee. [340]

[Endorsed]: Filed Sep. 29, 1930. [341]

[Title of Court and Cause—No. L.-696—Phoenix.]

CITATION ON APPEAL.

To Arizona Grocery Company, a Corporation, Plaintiff Above Named, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an appeal, and/or order allowing appeal filed in the Clerk's office of the United States District Court, for the District of Arizona, wherein Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, are appellants and you are appellee, to show cause, if any there

be, why the judgment rendered against the said Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, appellants as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Hon. F. C. JACOBS, Judge of the United States [342] District Court, for the District of Arizona, this 24th day of September, 1930.

[Seal] F. C. JACOBS,
Judge of the United States District Court, for the District of Arizona.

Service of the within citation on appeal, and receipt of a copy thereof is hereby admitted this 29th day of September, 1930.

Service is also admitted as of this date and receipt of copies of petition for appeal, order allowing appeal and fixing amount of cost and/or supersedeas bond, assignments of error, and bond, all having to do with the above entitled and numbered cause.

ELLIOTT & SNELL,
Attorneys for Arizona Grocery Company,
Plaintiff and Appellee. [343]

[Endorsed]: Filed Sep. 29, 1930. [344]

[Endorsed]: No. 6284. United States Circuit Court of Appeals for the Ninth Circuit. The Atchison, Topeka & Santa Fe Railway Company, a Corporation, Bay Transport Company, a Corpora-

tion, and Southern Pacific Company, a Corporation, Appellants, vs. Arizona Grocery Company, a Corporation, Appellee, and Southern Pacific Company, a Corporation, and Santa Maria Valley Railroad Company, a Corporation, Appellants, vs. Arizona Grocery Company, a Corporation, Appellee. Transcript of Record. Upon Appeals from the District Court of the United States for the District of Arizona.

Filed October 20, 1930.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. ——.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.,
Defendants and Appellants,
vs.
ARIZONA GROCERY COMPANY,
Plaintiff and Appellee.

SOUTHERN PACIFIC COMPANY et al.,
Defendants and Appellants,
vs.
ARIZONA GROCERY COMPANY,
Plaintiff and Appellee.

STATEMENT OF APPELLANTS OF PARTS OF RECORD NECESSARY TO BE PRINTED.

To Honorable PAUL P. O'BRIEN, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and to Messrs. ELLIOTT & SNELL, Attorneys for Plaintiff and Appellee:

I.

Defendants and appellants herein state that in the review of the above causes by the United States Circuit Court of Appeals for the Ninth Circuit they intend to rely upon alleged errors committed by the trial court as follows, to wit:

1. Errors of the trial court in its findings of fact and conclusions of law.
2. Errors of the trial court in refusing to make findings of fact and conclusions of law requested by the appellants and defendants.
3. Errors of the trial court in rendering judgments in favor of the plaintiff and appellee, and against the defendants and appellants.

II.

The defendants and appellants also state that for the proper consideration of said alleged errors they think it necessary to print the following parts and portions of the transcript of record certified and filed by the Clerk of the United States District Court with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, to wit:

All of said transcript of record save and except the agreed statement of facts appearing upon pages 52 to 90, both inclusive, of said transcript; and save and except Plaintiff's Exhibits Nos. "A," "B," and "C," appearing upon pages 97 to 102, both inclusive, of said transcript; and save and except the final findings of fact and conclusions of law found by the Court appearing upon pages 188 to 201, both inclusive, of said transcript.

Dated at Phoenix, Arizona, this 16th day of October, 1930.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
JAMES E. LYONS,
A. BURTON MASON,
GERALD E. DUFFY,
Attorneys for Defendants and Appellants.

Service of the within statement of appellants of parts of record necessary to be printed is admitted this 16th day of October, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiffs and Appellees.

[Endorsed]: Statement of Appellants of Parts of Record Necessary to be Printed. Filed Oct. 20, 1930. Paul P. O'Brien, Clerk.

In the District Court of the United States in and for the District of Arizona.

No. L.–695—PHOENIX.

ARIZONA GROCERY COMPANY, a Corporation,

Plaintiff,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.,

Defendants.

No. L.–696—PHOENIX.

ARIZONA GROCERY COMPANY, a Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY et al.,

Defendants.

STIPULATION RESPECTING RECORD ON APPEAL.

It appearing that pages 137, 144, 145 and 156 of the Consolidated Record in the above-entitled causes heretofore transmitted by the Clerk of the above-entitled court to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, are incorrect in certain respects:

IT IS HEREBY STIPULATED AND AGREED that the pages annexed to this stipulation and numbered respectively 137, 144, 145 and

156, are true and correct copies of said pages, so numbered, as the same appear from the original record on file in the office of the Clerk of said District Court, and may be substituted in the copy of said record heretofore transmitted, as aforesaid, in place of the pages thereof respectively identified by said numbers.

Dated October 23, 1930.

ELLIOTT & SNELL,
Attorneys for Plaintiffs.
BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
Attorneys for Defendants.

6. On the 22d day of June, 1921, in a proceeding before the Interstate Commerce Commission known as Docket 11532, entitled "Traffic Bureau, Phoenix Chamber of Commerce, et al., complainants, v. Director General et al., defendants" (to which proceeding Arizona Grocery Company, a copartnership, predecessor in interest of the plaintiff herein, was a party complainant) upon a complaint alleging that the rates on sugar in carloads from points in California (including all points in said state referred to in said list of shipments hereinbefore set forth) to Phoenix had been, were, and in the future would be unreasonable in violation of the Interstate Commerce Act, said Commission after due hearing and investigation duly made and rendered its opinion and order in said proceeding dated June 22d, 1921, which said opinion is reported in Volume 62, I. C. C. Reports, at pages 412 and following. Said report and order were and are as follows: [137]

Thereafter the defendants in said proceeding before said Commission, including the defendants in these causes and their connecting carriers, duly and regularly filed and published their tariffs effective September 17, 1921, complying with the Commission's order in said Docket No. 11,532, and naming a rate of 96 cents per hundred pounds on sugar, in carloads, from points in California to Phoenix, Arizona, which said rate was one-half cent less than the rate of 96½ cents per hundred pounds found not unreasonable for the future by said Commission in said Docket No. 11,532.

Said rate of 96 cents per 100 pounds remained in effect until on or about July 1, 1922, upon which date, in accordance with the recommendations made by said Commission in a report in a proceeding known as Docket 13,293, Reduced Rates 1922, reported in Volume 68, I. C. C. Reports, at pages 676 and following, said rate of 96 cents was voluntarily reduced to 86½ cents per hundred pounds; said last-mentioned rate of 86½ cents per hundred pounds was named in tariffs of said defendants herein, and of other carrier engaged in interstate commerce, and was duly and regularly filed with the Interstate Commerce Commission in accordance with law.

Said last-mentioned rate of 86½ cents per hundred pounds remained in effect until on or about January 10, 1924, upon which date the same was voluntarily reduced to 84 cents per hundred pounds; said last-mentioned rate of 84 cents was duly and regularly established by these defendants and by

other common carriers engaged in interstate commerce, and was named in tariffs duly and regularly filed in accordance with law.

Said rates of 86½ cents per hundred pounds and 84 cents per hundred pounds were the rates which were successively in effect, and assessed upon complainant's shipments during the period of [144]

movement thereof. Said rates are the rates referred to "as charged" upon said list of shipments hereinbefore set forth.

7. Said last-mentioned rate of 84 cents per hundred pounds remained in effect until February 25, 1925, upon which date the same was reduced to 71 cents per 100 pounds, pursuant to and in compliance with certain findings and orders made by said Commission in a proceeding known as Docket No. 14,449, reported in Volume 95, I. C. C. Reports, at pages 244 and following, in which proceeding the Traffic Bureau of the Phoenix Chamber of Commerce, and certain others including the plaintiff, were complainants, and in which proceedings said complainants alleged that the rates on sugar from points in California, including the points of origin of the shipments of plaintiff herein, to Phoenix, Arizona, had been, were, and in the future would be, unreasonable. Said report and order of said Commission in said proceeding, Docket No. 14449, were and are as follows: [145]

and were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates found in said proceeding to have been reasonable; and that said complainants were entitled to reparation, with interest. Said report and order of said Commission in said Docket No. 16,742, were and are as follows: [156]

[Endorsed]: Filed Oct. 23, 1930. C. R. McFall, Clerk, United States District Court for the District of Arizona. By H. F. Schlittler, Deputy Clerk.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the United States District court in and *or* the District of Arizona, do hereby certify that the annexed and foregoing is a true and full copy of the original Stipulation Respecting Record on Appeal, filed on October 23, 1930, in cases numbered L.-695—Phoenix and L.-696—Phoenix, Arizona Grocery Company vs. Atchison, Topeka & Santa Fe Railway Company and Southern Pacific Company, a Corporation, now remaining among the records of the court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid court at Phoenix, this 23d day of October, A. D. 1930.

[Seal]

C. R. McFALL,
Clerk.
By H. F. Schlittler.
H. F. Schlittler,
Deputy Clerk.

[Endorsed]: Filed Oct. 25, 1930. Paul P. O'Brien, Clerk.

No. 6284

United States

Circuit Court of Appeals

For the Ninth Circuit.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a Corporation, BAY TRANSPORT COMPANY, a Corporation, and SOUTHERN PACIFIC COMPANY, a Corporation,

Appellants,

vs.

ARIZONA GROCERY COMPANY, a Corporation,

Appellee.

and

SOUTHERN PACIFIC COMPANY, a Corporation, and SANTA MARIA VALLEY RAILROAD COMPANY, a Corporation,

Appellants,

vs.

ARIZONA GROCERY COMPANY, a Corporation,

Appellee.

Upon Appeals from the District Court of the United States for the District of Arizona.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October term, A. D. 1930, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Friday, the thirteenth day of February, in the year of our Lord one thousand nine hundred and thirty-one. Present: Honorable FRANK H. RUDKIN, Circuit Judge, Presiding; Honorable CURTIS D. WILBUR, Circuit Judge; Honorable WILLIAM H. SAWTELLE, Circuit Judge.

[Title of Cause.]

ORDER OF SUBMISSION.

ORDERED appeals in above cause argued by Mr. A. Burton Mason, counsel for the appellants, and by Mr. Frank L. Snell, Jr., counsel for appellees, and submitted to the Court for consideration and decision, with leave to counsel for appellants to file a reply brief within fifteen (15) days from date.

At a stated term, to wit, the October term, A. D. 1930, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the twenty-third day of March, in the year of our Lord one thousand nine hundred and

thirty-one. Present: Honorable FRANK H. RUDKIN, Circuit Judge, Presiding; Honorable CURTIS D. WILBUR, Circuit Judge; Honorable WILLIAM H. SAWTELLE, Circuit Judge.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

By direction of the court, ORDERED that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the Clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion filed.

[Title of Court and Cause.]

OPINION U. S. CIRCUIT COURT OF APPEALS.

Upon Appeal from the District Court of the United States for the District of Arizona.

Before RUDKIN, WILBUR and SAWTELLE, Circuit Judges.

WILBUR, Circuit Judge.—This is an appeal from the judgment of the District Court enforcing a reparation order of the Interstate Commerce Commission. The reparation order was made in a proceeding before the Interstate Commerce Commission entitled Traffic Bureau of Phoenix Chamber of

Commerce et al. vs. The Atchison, Topeka & Santa Fe Railway Company, No. 16,742. The record of the decision is found in the reports of the Interstate Commerce Commission (140 I. C. C. 171). The Interstate Commerce Commission in this proceeding declared the existing rate charged by the railway company to be unreasonable and unjust, fixed a future rate which it declared to be reasonable and just upon shipments of sugar in carload lots of 73 cents per 100 pounds from all points in Northern California, and 71 cents per 100 from points in Southern California, to Phoenix, Arizona. It declared the existing rates charged by the carriers to be unreasonable and unjust and awarded reparations in the amount subsequently incorporated in the judgment of the District Court, from which the railroad companies, hereinafter designated as appellants, take this appeal. No attack is made on this appeal as to the reasonableness of freight rates fixed in the order of the Interstate Commerce Commission for the future. Nor is it denied that the law authorizes the Interstate Commerce Commission, upon declaring a freight rate unreasonable and unjust, to order reparations in favor of shippers damaged by reason of the excessive rates previously charged them. Appellants' attack upon the order of the Interstate Commerce Commission awarding reparations, and upon the judgment of the District Court enforcing such reparations, is based upon the claim that the rates charged by them previous to the order of the Interstate Commerce Commission were Commission-made rates, and that while the

Commission would have a right to award reparations as against an unjust or unreasonable rate fixed by the carrier, it had no power to award reparations upon finding that a rate fixed by the Commission was excessive, for the reason that such rates were conclusively presumed to be just and reasonable until changed by the Commission, and that such change must be prospective and not retrospective. Before discussion of the points raised by the appellants, and the answers thereto by appellee, further facts with relation to the controversy should be stated.

The above-mentioned decision of the Interstate Commerce Commission (140 I. C. C. 171) was the third in a series of decisions by the Commission dealing with the freight rates on sugar transported from California to Arizona points over the Atchison, Topeka & Santa Fe Railway Company's lines, and also those of the Southern Pacific Company. These cases are referred to in the briefs as the first, second and third case.

In the first case, entitled Traffic Bureau of Phoenix Chamber of Commerce vs. Director General et al. (62 I. C. C. 412), the Commission, on June 22, 1921, fixed the freight rate on sugar from all points in California to Phoenix, Arizona, at not exceeding 96½ cents. In view of the importance of the findings and order of the Interstate Commerce Commission in the first case we quote a portion of the opinion as follows:

> "We find that the rates attacked were, are, and for the future will be, unreasonable to the

extent that they exceeded, exceed, or may exceed 96.5 cents."

In pursuance of this finding an order was entered June 22, 1921, prohibiting the carriers from publishing or collecting their present rates for the transportation of sugar in carload lots from California points to Phoenix, Arizona, and it was further ordered:

> "That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before September 17, 1921, upon notice to this Commission and to the general public, by not less than five days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply to the transportation of sugar in carloads from California points to Phoenix, Ariz., rates which shall not exceed 96.5 cents per 100 pounds. It is further ordered that this order shall continue in force until the further order of the Commission."

In pursuance of this order the carriers established a rate, effective September 17, 1921, of 96 cents per 100 pounds. On July 1, 1922, they reduced this rate 10 per cent in conformity with the recommendation of the Interstate Commerce Commission in its opinion entitled *Reduced Rates 1922* (68 I. C. C. 676). The rate for sugar in carload lots from California points to Phoenix was thus fixed at 86.5 cents. On January 10, 1924, by voluntary order

of the carriers, they fixed a new tariff rate of 84 cents. This change to the 84-cent rate was due to the change of the main line rates owing to the withdrawal of long and short haul relief asked for by the carriers from the Interstate Commerce Commission. Phoenix, although on a branch line, was given the benefit of the readjustment along the main line of the Southern Pacific. The shipments of sugar involved in this proceeding were transported between February 21, 1923, and February 10, 1925, during the period when the rates fixed by the carriers was either 86.5 or 84 cents per 100 pounds.

In Traffic Bureau Phoenix Chamber of Commerce vs. A., T. & S. F., 95 I. C. C. 244, decided January 6, 1925, the Interstate Commerce Commission fixed the rate on sugar from California points to Phoenix at not exceeding 71 cents per 100 pounds. It also decided that the complainants were entitled to reparations upon past shipments to the extent that charges theretofore paid by them exceeded the new rate. The order in pursuance of the findings in the second case was substantially in the phraseology of the order of the first case. The carriers were directed to cease collecting their present rates and to establish, before February 25, 1925, new rates "from all points in California to Phoenix, Arizona, rates which shall not exceed 71 cents per 100 pounds, minimum 60,000 pounds." It is also provided that the order shall continue in force until the further order of the Commission.

No order for the payment of reparations was made

in the second case. The case was subsequently consolidated with the third case, wherein the rates were fixed at 73 cents from Northern California and 71 cents from Southern California to Phoenix, as aforesaid. Reparations were finally ordered upon the basis of the findings in the third case and the period covered by the reparations ordered and involved in this decision, as already pointed out, is between the 21st day of February, 1923, and the 10th of February, 1925. That is to say, is within the period between the 21st of January, 1923, and the effective date of the order in the second case. The petition for relief in the second case having been filed on November 3, 1922, the period in which reparation is involved was subsequent to the inception of the proceedings in the second case and prior to the effective date of the order rendered in the case.

Appellee's answer to the contention of the appellants is that the order of the Commission in the first case, fixing a maximum rate of 96.5 cents, was not a fixing of a just and reasonable rate, but that it was the duty of the carrier by its published tariffs to fix a rate which was just and reasonable, not exceeding the maximum rate fixed by the Commission. Therefore, it is claimed the rate attacked in the subsequent proceeding before the Interstate Commerce Commission was not a rate fixed by that Commission, but one fixed by the carrier, and if the rate so fixed by the carrier was in fact unjust and unreasonable, the Commission in the subsequent case had a right to declare the rate charged by the carrier to be unjust and unreasonable and order reparations

for the excessive charges of the past as well as to fix a rate for the future which it deemed to be just and reasonable. It is also contended, as we understand it, that even if the decision of the Commission in the first case is held to be a fixing of a just and reasonable rate, nevertheless the rate thus established for the future was established in the exercise of the *quasi*-legislative power of the Commission and is not *res judicata*, and that upon the complaint of a shipper claiming to be damaged by the rates charged by the carriers, the Commission, acting in a *quasi*-judicial capacity, can review its action theretofore taken in its *quasi*-legislative capacity, can determine that the findings so made by it in its *quasi*-legislative capacity were erroneous, the rate established unreasonable and unjust, and render judgment in favor of the shipper for the difference between the rate as found by the Commission in its *quasi*-legislative capacity and the rate found by it in its *quasi*-judicial capacity to be reasonable and just. In this connection it may be of assistance to state the position of the Interstate Commerce Commission as disclosed by its opinion in the third case:

> "Defendants contend that they should not be required to pay reparation on shipments which moved under rates approved or prescribed by us. We have several times announced that the doctrine of *res adjudicata* is not applied by us. Goss vs. Director General, 73 I. C. C. 649. We reserve the right, upon a more comprehensive record, to modify our previous findings, whether in the same or a previous case, upon matters

directly in issue before us as to which it clearly appears that our previous findings would not accord substantial justice under the laws which we administer. We have such a case here. For the first time the record before us is comprehensive in the evidence which it contains bearing upon the reasonableness of the rates assailed. Upon this record we reach the conclusion that the rate prescribed in the first Phoenix case, during the period embraced in these complaints, was unreasonable, and that a lower rate would have been reasonable during that period. If we are within our authority in finding that a lower rate would have been reasonable, then it must follow that shippers who paid the freight charges at the higher rate paid charges which were unreasonable, and are entitled to reparation upon adequate proof that they paid or bore such charges."

It will be observed that the power of the Commission, as stated in the portion of the opinion just quoted, is not based upon the theory that the rate established in the previous order was anything other than what was then declared to be a just and reasonable rate. In other words, no distinction such as is claimed by the appellee was made by the Commission. It assumed in its opinion that the rate theretofore established by it, under the evidence then before the Commission, was determined by them to be a just and reasonable rate, but the Commission concluded that with more ample evidence, and after a more extensive investigation, its first decision was

erroneous. It therefore redetermined the question of the reasonableness of the rate as fixed in its previous order as a just and reasonable rate and decided that the carriers, in exacting the rate thus fixed by the Commission, had exacted an excessive and unreasonable and unjust rate and for that reason must reimburse the shippers from whom the rates were exacted. So far as the opinion of the Commission is concerned, no distinction is made between its power to fix rates which are just and reasonable and its power to fix maximum rates. As this is one of the basic questions in the case at bar, we pause here to say that we are in accord with the apparent conclusion of the Commission that its order fixing a maximum rate was in legal effect a determination by the Commission in its administrative or *quasi*-legislative capacity of a reasonable and just rate and that the carrier in establishing its tariffs as required by the Commission was justified in fixing its various rates within the maximum thus established and that the order of the Commission amounted to a decision that rates fixed by the carrier below the maximum it had established were just and reasonable. It would be absurd, it seems to us, to say that the Commission was empowered to prohibit the further collection of a freight rate established by the carrier on the ground that it was unjust and unreasonable and to replace that rate with another rate which was also unjust and unreasonable, that is, not just and not reasonable. The statute does not authorize or suggest the imposition of tentative rates pending an investigation or of

rates *pendente lite* in an investigation. Its power in the first place is to declare a rate unreasonable and unjust, and having so declared to replace it with a rate which is reasonable and just. It should be stated at this juncture that the contention of the appellee is based upon the language of section 15, subdivision 1, with relation to the fixing of rates for the future. This subdivision of section 15 is a very long and complex sentence. It contains the following phrase:

> " * * * the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt

the classification and shall conform to and observe the regulation or practice so prescribed."

The appellee places the phrase, "or the maximum or minimum, or maximum and minimum, to be charged" in opposition to the individual rate to be prescribed as just and reasonable. We think the phrase "just and reasonable" applies throughout the whole portion of the sentence involved in rate making, and therefore applies to the maximum or minimum or to the maximum and minimum, as the case may be. Otherwise, it would be absurd to provide that the carrier should thereafter be compelled to conform to the order of the Commission. The whole purpose of the act was to create and compel the enforcement without discrimination of rates which were just and reasonable. In our opinion the provisions in regard to the maximum or minimum rate were largely for the convenience of the Commission in dealing with the extremely intricate question of freight rates. In the case at bar freight rates were involved from a number of California points to a number of Arizona points. The Commission did not undertake to fix the rates from each separate point in California to each separate point in Arizona, and made a blanket order fixing a maximum rate, and not only authorized but directed the carrier to establish its rates within that maximum. In so doing it was incumbent upon the carrier to conform to certain principles in rate-making, including, perhaps, the principle of long and short haul. In this connection it should be observed that when the Hepburn Act was passed, in

1906, section 15, with regard to the fixing of future rates, authorized the Commission "to determine and prescribe what would be just and reasonable rate or rates, charge or charges to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed"; and to provide that the carrier should not thereafter collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed. This act was amended by the Mann-Elkins Act, July 18, 1910, by extending the clause to cover individual or joint rates, as follows:

> " * * * the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed. * * * "

It was thus evidently contemplated by Congress that the Commission would not fix a particular rate to the exact cents to be collected by the carrier, but should in every case fix a rate which is the maximum rate which the carrier can charge. This was the legislative method pointed out by Congress to the Commission for fixing by it of freight rates. It is true that the language of the subsequent amendment now in force and hereinabove quoted, taken alone and without considering the cardinal purpose of the act, might lead to the conclusion that the Commission might either fix a just and reasonable rate or a maximum rate, but in view of the history of the legislation and its cardinal purpose it is clear that the maximum rate to be fixed by the Commission must be a reasonable rate. In this connection it should be observed that in the numerous decisions by the courts considering the question of freight rates before the enactment of section 15 in its present form (February 28, 1920, 41 Stat. 484) the court has invariably referred to the administrative power of the Commission as a power to fix rates that are reasonable. No other thought has apparently entered the mind of the judges who are so frequently called upon to pass upon the power of the Commission under the Hepburn Act and the amendments thereto. C., R. I. & P. Ry. Co. vs. U. S., (1925) 6 Fed. (2d) 888; Houston Cotton Exch. vs. A. & A. R. R. Corp., (1924) 87 I. C. C. 392, 93 I. C. C. 268; C., R. I. & P. Ry. Co. vs. U. S., (1927) 274 U. S. 29, 71 L. Ed. 911; Montrose Oil Ref. Co. vs. St. L.-S. F. Ry., (1927) 25 F. (2d) 750; s. c., (1923) 78 I. C. C.

572; (1924) 95 I. C. C. 96; Mellon vs. World Pub. Co., (1927) 20 F. (2d) 613; World Pub. Co. vs. Director General, (1919) 53 I. C. C. 491.

It is clear that a blanket order fixing a maximum rate from a state as large as California to an adjoining state might result in individual rates that would be in fact unreasonable and unjust. For instance, if a sugar factory were established on the west bank of the Colorado river it would be unreasonable, no doubt, to charge the maximum rate for transporting sugar across the river to Yuma, Arizona, but the Commission was bound to consider such a possibility in fixing its maximum rate, and no doubt did so. If new conditions arose later which rendered rates fixed by the carrier unreasonable, the shipper affected could ask for the establishment of a new rate. The Commission could then reexamine the situation and establish a new rate, but there is no reason why an allowance of reparations should be made. The shipper's remedy would be a seasonable application for a change of rate before any serious damage had been suffered.

The contention is that the Commission could revise its original findings as to what was in fact a reasonable rate because in the first instance it acted as a law-making body—a legislature—and in the second it acted in a judicial capacity—as a court. Let it be granted that the Commission in awarding reparations acted judicially, as has been so often said (Baer Bros. vs. Denver & R. G. R. R., 233 U. S. 479; Great N. Ry. vs. Merchants Elec. Co.,

259 U. S. 285, 291); let it be granted, also, that in fixing a reasonable rate for past transactions as a basis for its award of reparations it also acted judicially, as has also sometimes been said (Great No. Ry. vs. Merchants Elec. Co., *supra*). What follows? Is it not true that a court is bound in its determination by the law? Consequently, if the court finds that a rate has been fixed by law, by the legislature, it must apply that law as a measure of right, and award as excessive only such charges as exceed the rate fixed by law. The Transportation Act (sec. 16, subd. 1), delegating power to the Commission to award reparations, limits that power to parties "entitled to an award of damages under the provisions of this chapter [act] *for a violation thereof* * * * " (Italics ours.) See, also, Transportation Act, sec. 10, subd. 8.) Is the court (the Commission in its *quasi*-judicial capacity) to say that a carrier has no lawful right to collect a rate established by law (that fixed by the Commission acting in its *quasi*-legislative capacity), or, having collected it, to retain it? It is true that the original order is not *res judicata,* but its effect is quite as final, it is a legislative fiat, good, if constitutional, in all courts and at all times until changed by the legislature.

These considerations point to a clear distinction between Commission-made rates, that is, legislative rates, and those established by the carrier. In the latter case, however, we have also a legislative declaration by Congress that all rates established by the carrier must be just and reasonable (Transporta-

tion Act, sec. 1, subds. 4, 5) and declaring that all rates which are "unjust and unreasonable" are "prohibited" and "unlawful." It may be said in a broad sense that Congress itself by this enactment has fixed "just and reasonable rates" as those allowed to be charged and collected and has permitted the carrier in the exercise of its business responsibilities to tentatively ascertain and fix such reasonable rates, subject to supervision and revision by the Commission in case of error. The carrier who fixes and charges excessive rates does so with the knowledge that its judgment is to be revised, and reparations awarded, if necessary to reduce such rates to what is just and reasonable. It is permitted to judge its own case in the first instance in fixing its rates, but does so in view of and because of such power of supervision and reparation in the Commission. When, however, in regularly pursuing its delegated power, the Commission establishes a specific rate as reasonable in fact, the legislative power has so definitely established the specific rate thus fixed as just and reasonable that there is no longer room for judicial decision as to what is a just and reasonable rate. Congress, through its agent, the Commission, has established the measure by which the reasonableness of the rate is to be judged. In considering an application for damages for charging unreasonable rates a court, or the Commission acting as such, must confine its inquiry to the other factors involved in an award of reparations, such as the amount of freight moved, the point of origin and of delivery, the owner of the shipment, etc., but

if there is no excess charge there can be no award, for where the rate is one fixed by law it is not excessive in any legal sense. Indeed, although the appellee insists that the fixing of rates as a basis of reparation for past shipments is a judicial or *quasi*-judicial act, it would be better, perhaps, for its position if the act were legislative, for a legislative body, unlike a court, can establish the law retroactively unless prevented by constitutional limitations. The fixing of a past rate by the Commission for purposes of awarding reparations certainly has some of the attributes of a legislative act, notably that it is of universal application to all past transactions, whether the shippers are parties to the proceedings or not. It is binding upon both the carrier and its shippers, and this because any other rule would destroy uniformity, which the act endeavors to establish and maintain. (See discussion in Mitchell Coal Co. vs. Penna. R. R. Co., 230 U. S. 247, 258, 259, 264, 265.) If the second fixing or refixing of the rate by the Commission as a basis for reparations is legislative, the only limits upon a retroactive act, other than the Constitution, would be the limitations of the Transportation Act defining the powers delegated to the Commission. The only constitutional restriction upon the legislative power to retroactively reduce rates suggested by the appellant is the constitutional prohibition against the taking of property without due process of law. That is, it is argued, the Commission, having established a legal and lawful rate, the freight charges thus fixed, allowed and collected become the property of

the carrier and cannot by a new retroactive law be arbitrarily taken away by legislative fiat. This position seems to be well taken. (See Fletcher vs. Peck, 6 Cranch [10 U. S.], 87, 135; Blodgett vs. Holden, 275 U. S. 142; Calder vs. Bull, 3 Dallas [3 U. S.], 385; Twining vs. N. J., 211 U. S. 78; Hurtado vs. California, 110 U. S. 516; Calder vs. Bull, 3 U. S. 385, cited by appellant, where the subject of the constitutional limitation upon retroactive legislation is considered by the Supreme Court.) That is to say, whether we regard the power of the Commission in establishing a just and reasonable rate as a basis of reparations as a judicial power or as a legislative power, in either event rates established by the legislative power and collected by the carrier cannot be taken from it because it is subsequently determined to be excessive, whether the belated determination is by court or legislature, or, to use the phrases more commonly applied to the acts of the Commission, whether such subsequent determination is *quasi*-legislative, administrative or *quasi*-judicial—in either event a rate established by law—lawful when charged, remains lawful when attacked later by the shipper. The view we have expressed is supported by all the decisions of state courts construing laws establishing rate-regulating bodies having power to grant reparations for excessive rates charged by the carrier. (M., K. & T. Ry. vs. R. Com. of Texas, 3 S. W. [2] 489; Id., 13 S. W. [2] 680; Mathieson Alkali Works vs. N. & W. Ry. Co., 147 Va. 426, 37 S. E. 608; Miller Mill Co. v. L. & N. Co., 207 Ala. 253, 92 So. 797; Young Co. vs. Payne,

127 Miss. 48, 89 So. 782; Bonfils vs. Public Utility Comm., 67 Colo. 563, 189 Pac. 775; Northern Pacific Ry. Co. vs. Dept. of Pub. Works, 136 Wash. 389, 240 Pac. 362; Texas & Pac. Ry. Co. vs. R. R. Comm., 137 La. 1089, 69 So. 837.) To the same effect is the decision of the Railroad Commission of California, 2 Cal. R. R. Comm. Reports 626. A similar decision was rendered September 16, 1930, by the United States District Court for the Southern District of Mississippi in Eagle Cotton Oil Co. vs. So. Ry. Co. (not yet reported), wherein the order of the Interstate Commerce Commission in a case of the same title reported in 140 I. C. C. 131, granting reparations for excessive rates that had been fixed by the Commission, was held void. The appellee cites the decision of the Supreme Court in U. S. vs. M. & M. Traffic Ass'n., 242 U. S. 178, as decisive of the question as to the power of the Commission to make reparations on the basis that Commission-made rates were unreasonable. This decision, as we understand it, merely holds that a shipper who is not a party to a proceeding attacking a rate as unreasonable cannot properly ask for a rehearing of its decision, but should file a new application attacking the rate, as permitted by section 13 of the Transportation Act. On such application he would be entitled to a hearing notwithstanding the previous determination of the Commission in the other case. This decision does not deal with the question of reparations. Our attention is also directed to a decision of the United States District Court (in a three-judge case), McLean Lbr. Co. vs. U. S., 237 Fed. 460, 466, where

that court held that a shipper could invoke the aid of a court to review the action of the Commission on the ground that the rate is unreasonably high. It is sufficient to say of this case that the question involved was not one of reparations, but of the power of the court to review the order of the Commission fixing a new rate, upon the ground that its action was not in pursuance of its authority and that the rate fixed was unreasonably high. The court held that it could entertain a bill to inquire into the matter at the instance of a party to the proceedings before the Interstate Commerce Commission, but it also held that the finding of the Commission as to the reasonableness of the rate it established was conclusive where supported by substantial evidence (Id., p. 470). This decision has no bearing upon the question involved here as to the power of the Commission to award reparations in conflict with its own previous findings as to the reasonableness of a rate.

The decision of the Supreme Court in Baltimore & O. R. R. vs. U. S., 279 U. S. 781, is cited as sustaining the power of the Commission to make an award in opposition to its finding in the "first case" and to make reparations accordingly. That case merely decided that when the order of the Commission was set aside by the court as illegal the court could order a restoration of funds paid under the erroneous order as a part of the relief granted the parties attacking the validity of the order. This decision does not support the conclusion that a court could set aside a previous judgment, or decree, in a

subsequent suit brought for that purpose, merely because in the former suit an erroneous view of the evidence had resulted in the judgment, or decree, nor is it authority for the proposition that a court can set aside a law or legislative act because the legislators were induced to pass the legislation by false or erroneous or insufficient evidence. Such power does not exist. There are statements in the opinion of the Supreme Court in Reagan vs. Farmers L. & T. Co., 154 U. S. 362, 367, that militate against the views herein expressed. We quote from that opinion the paragraph relied upon by *amici curiae* to sustain the power of the Commission to award reparations against past collections of Commission-made rates.

> "It is doubtless true, as a general proposition, that the formation of a tariff of charges for the transportation by a common carrier of persons or property is a legislative or administrative rather than a judicial function. Yet it has always been recognized that if a carrier attempted to charge a shipper an unreasonable sum the courts had jurisdiction to inquire into that matter and to award to the shipper any amount exacted from him in excess of a reasonable rate; and also in a reverse case to render judgment in favor of the carrier for the amount found to be a reasonable charge. *The province of the courts is not changed, nor the limit of judicial inquiry altered, because the legislature instead of the carrier prescribes the rates.* The courts are not authorized to revise

or change the body of rates imposed by a legislature or a commission; they do not determine whether one rate is preferable to another, or what under all circumstances would be fair and reasonable as between the carriers and the shippers; they do not engage in any mere administrative work; but still there can be no doubt of their power and duty to inquire whether a body of rates prescribed by a legislature or a commission is unjust and unreasonable and such as to work a practical destruction to rights of property, and, if found so to be, to restrain its operation. In Chicago, B. & W. R. Co. vs. Iowa, 94 U. S. 155 (24 L. Ed. 94), and Peik vs. Chicago & N. W. R. Co., 94 U. S. 164 (24 L. Ed. 97), the question of legislative control over railroads was presented, and it was held that the fixing of rates was not a matter within the absolute discretion of the carriers, but was subject to legislative control." (Italics ours.)

It is therefore argued that as the courts could formerly award reparations even against legislative rates, the Commission, acting as a *quasi*-judicial body, can now exercise that function. In considering this decision it should be observed that the paragraph relied upon, so far as it refers to the power of the court to review a legislative rate because such rate is excessive, was not involved in the case. The question for decision was the power of the court to relieve a carrier from rates so low as to be confiscatory (Id., p. 399), a power now universally conceded. This dictum in Reagan vs. Farmers L. & T.

Co., *supra,* is inconsistent with the theory of reparations for excessive or discriminatory rates stated in Mitchell Coal Co. vs. Penna. R. R. Co., 230 U. S. 247, 259, *supra,* as follows:

> "Under the statute the carrier has the primary right to fix rates, and so long as they are acquiesced in by the Commission the carrier and the shippers are alike bound to treat them as lawful. After the rate has been abandoned the carrier is still obliged to treat it as having been lawful and cannot refund what has been collected under it until the Commission determines that what was apparently reasonable had in fact been unreasonable. But such a determination cannot be made by the courts, for they would not only have first to exercise an administrative function and make a rate by which to measure the reasonableness of the charge collected, but would have to go further and treat as unreasonable a rate, past or present, which the statute had declared should be deemed lawful until it had been held otherwise by the Commission."

This case dealt with the power of the courts under the Commerce Act (24 Stat. 382), the predecessor of the Transportation Act involved here. In that case it was also said that:

> "The courts have not been given jurisdiction to fix rates or practices in direct proceedings, nor can they do so collaterally during the progress of a lawsuit when the action is based on

the claim that unreasonable allowances have been paid." (See, also, Skinner & Eddy Co. vs. U. S., 249 U. S. 557, 562.)

The parties here concede that the Commission alone must declare the unreasonableness of the past rate and ascertain the reasonable rate that should be charged as a basis for reparations. There is no helpful analogy between the common law power of the courts in giving relief against unreasonable rates and the statutory power of the Commission to make reparations, for in the latter case jurisdiction is statutory and the new rate is one that upon ascertainment must be applied in all subsequent applications for reparations covering that period.

It is contended by *amici curiae* that the rates established by the Commission June 22, 1921, in the first case, had been set aside and nullified by the act of the carrier in establishing a lower rate and by the proceedings of the Interstate Commerce Commission entitled *Reduced Rates 1922,* 68 I. C. C. 676, wherein the Commission advised certain blanket reduction of rates by percentages, which recommendation was acted upon by the carriers by making a reduction from 96 to 86.5 cents per 100 from California points to Phoenix. We cannot concur in this conclusion. It is based upon the claim, or perhaps it should be only considered a suggestion, to meet the appellants' contention, that the maximum rate fixed by the Commission was the exact and only measure of reasonableness and that therefore a lower rate is necessarily a departure from reasonableness. This suggestion is based upon the as-

sumption that the exact amount of a just and reasonable rate is capable of exact scientific ascertainment, as is the time of an eclipse, or the velocity of light, or as the weight of a cubic foot of water, whereas the extent to which freight rates are reasonable or unreasonable is a matter of judgment to be exercised by men and upon which they will and do differ. The ascertainment of a maximum rate is in effect a decision that any rate below that maximum is reasonable as to the shipper, and that the carrier below that maximum can be trusted to fix a rate that is not too low to protect itself. There was no change in the subsequent action of the Commission or of the carrier which affected the maximum; and no change in the maximum by the Commission, because the voluntary act of the carrier in reducing its rate to 86.5 made an order unnecessary. The nature of this blanket order of the Commission was considered by the Supreme Court in Brimstone R. R. & Canal Co. vs. U. S., 276 U. S. 104.

Judgments reversed.

[Endorsed]: Opinion. Filed March 23, 1931. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 6284.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a Corporation, BAY TRANSPORT COMPANY, a Corporation, and SOUTHERN PACIFIC COMPANY, a Corporation,

Appellants,

vs.

ARIZONA GROCERY COMPANY, a Corporation,

Appellee,

and

SOUTHERN PACIFIC COMPANY, a Corporation, and SANTA MARIA VALLEY RAILROAD COMPANY, a Corporation,

Appellants,

vs.

ARIZONA GROCERY COMPANY, a Corporation,

Appellee.

JUDGMENT U. S. CIRCUIT COURT OF APPEALS.

Upon appeal from the District Court of the United States for the District of Arizona.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Arizona, and was duly submitted:

On consideration whereof, it is now here ORDERED AND ADJUDGED by this court that the judgment of the said District Court in this cause be, and hereby is, reversed.

[Endorsed]: Judgment. Filed and entered Mar. 23, 1931. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

MOTION TO STAY ISSUANCE OF MANDATE.

Now comes the Arizona Grocery Company, the appellee in the above-entitled cause, and shows to this court that said appellee desires a stay of the issuance of the mandate in the above-entitled cause, for the purpose of applying to the Supreme Court of the United States for the issuance of a writ of certiorari.

WHEREFORE, said appellee prays that the mandate of this court be stayed and withheld until May 21, 1931, or such time as to the court shall seem proper.

Dated this 7th day of April, 1931.

ELLIOTT & SNELL,
Attorneys for Appellee.

The receipt of a copy of the within instrument acknowledged this 7th day of April, 1931.

BAKER & WHITNEY,
Attorneys for Appellants.

[Endorsed]: Motion to Stay Issuance of Mandate. Filed Apr. 9, 1931. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of Messrs. Elliott & Snell, counsel for the appellee, and good cause therefor appearing, IT IS ORDERED that the issuance, under Rule 32, of the mandate of this court in the above cause be, and hereby is stayed to and including May 21, 1931; and in the event the petition for a writ of certiorari to be made by the appellee herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this court is to be stayed until after the said Supreme Court passes upon the said petition.

FRANK H. RUDKIN,
United States Circuit Judge.

Dated: San Francisco, California, April 9, 1931.

[Endorsed]: Filed Apr. 9, 1931. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify that the foregoing four hundred and sixty-five (465) pages, numbered from and including 1 to and including 465, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellee and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 16th day of April, A. D. 1931.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1931

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1280)